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STATE AND MUNICIPAL GOVERNMENT IN THE UNITED STATES

BY

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PREFACE

In spite of the importance and interest of international and national questions of policy and in spite of the rapidly widening sphere of federal legislation and administration the life of an American citizen is affected more often by the agencies of local government than by those of the national government. Under the protection of the Federal Constitution the life and property of the citizen are governed and protected by state, not federal, laws. In his political capacity the citizen takes part in both the federal and the local government in accordance with state regulations. Acting under the state laws are the particular political units in which the citizen may reside—the county, city, or town. To the authorities of these the citizen most frequently looks for governmental support and regulation. Yet these local bodies are distinctly subordinate to and created by the authority of the state and are supervised and regulated by it.

It is the purpose of this book to discuss the organization, the distribution of powers and functions, and the operation of these agencies of local government. Other books have dealt with state government and state administration or with municipal government and municipal administration, but this book covers both state and municipal government, treating the two as a single manifestation of local government. With this in mind the book has been divided into five parts. In Part I the federal system and the state constitutions as the fundamental basis of local government are discussed. Part II deals with the political system—the electorate in theory and in action, in primaries, in election campaigns, and in its direct action in the use of the initiative, referendum, and recall. Part III deals with state government—the different organs and the functions which these organs perform. State administration, which is rapidly being extended both directly and through the supervisory power of the state, is discussed in its various manifestations.

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Three chapters in this part are devoted to the legal system and the operation of the state courts. In Chapter XIII, The Legal System of the States, I have attempted to describe and define very briefly some legal principles and terms. Strictly speaking, the propriety of this chapter in a book on government might be questioned, but experience has shown that students are both ignorant of and curious regarding the topics here discussed. Part IV deals very briefly with county and town government. I have deliberately reduced this discussion to its lowest terms for several reasons. Not the least compelling is the limitation of space, but more important than that is the fact that many of the functions of the county and town are performed by the state or by the city or by both, and it has seemed better to study and explain these functions in the discussion of state or of municipal government. Again, many of the officials of the county are really state officials enforcing state laws. Thus, for example, the county or prosecuting attorney is fully discussed in the chapters on the organization of the state courts and but briefly mentioned in the chapters on town and county government. In like manner both the counties and the cities are engaged in the construction and upkeep of roads, but the construction of streets is treated in the section on municipal government. While this organization is somewhat of a departure, experience has shown that it helps the student in handling the complicated body of fact involved. Part V deals with municipal government. Here I have tried to describe the development of municipal government, to discuss the characteristics of cities and their relation to the state. In this section, as in the section on county government, I have been able to treat the political organization briefly, inasmuch as political parties and machines, the initiative and the referendum, have been discussed in Part II. Three chapters are devoted to the different types of city government and four chapters to the functions the city performs.

I cannot pretend to present anything original or novel. In fact I have attempted to confine myself to an exposition of the existing institutions. I have greatly profited by and freely used the treatises in these various fields, particularly those of

Professors Holcombe and Mathews in state government and Professors Fairlie, Munro, and McBain and President Goodnow in municipal government. In general I am in agreement with their conclusions, and only after a fresh reading of the sources and further study have I ventured to disagree. I have frequently cited these authors in order that students might easily find more extended discussions.

In dealing with forty-eight different states and with all the municipalities in the United States the opportunity for error and misstatement is great. I have tried to discover, if possible, what is the normal institution, method, or practice and explain that. Where there are sharply marked divergences, those which seemed most interesting or typical have been explained, but I have not attempted to record—either in the text or footnotes—the peculiar practice and the particular form which an institution might take in each state or city.

In addition to the authorities mentioned above I wish to express my grateful acknowledgments to Professor J. M. Mathews, of the University of Illinois, who read the proof of Parts I, II, and III, and by his valuable suggestions greatly improved my text; to my colleague, Miss Alice M. Holden, of the Smith College faculty, who has read the entire manuscript and the proof and prepared the index; and to Miss Cynthia W. Eastwood, who has aided in the preparation of the text, assisted in the reading of the proof, and verified the references and quotations. But for all statements of fact and opinion I am responsible.

EVERETT KIMBALL

CONTENTS

PART I. THE CONSTITUTIONAL BASIS OF STATE GOVERNMENT

	PAGE
CHAPTER I. THE NATURE OF THE AMERICAN STATE	3

The political importance of the states. Variations of states. Similarities of states. The states bodies politic. Federalism. Prohibitions upon the states. Obligations imposed upon the states. Powers reserved to the states. The police power. Federal supremacy.

CHAPTER II. STATE CONSTITUTIONS	18
---	----

Importance and origin of state constitutions. Chief provisions of early state constitutions. Fundamental principles of state constitutions. Classification of state constitutions. Contents of a typical state constitution. Constitutional amendment and revision.

PART II. THE POLITICAL SYSTEM OF THE STATES

CHAPTER III. THE ORGANIZATION OF THE ELECTORATE	39
---	----

Definition of the electorate. Original restrictions on the suffrage. Present qualifications for the suffrage. Disqualifications. Election districts. Definitions of a political party. Functions of a party. Organization of a party. Party conventions. Discussion of the convention system. The machine. Tammany Hall. Why party organizations sometimes become machines.

CHAPTER IV. THE ELECTORATE IN ACTION	61
--	----

Registration. Functions of the primaries. Organization of the primaries. Procedure in primaries. Party tests. Merits and faults of the primary system. The direct primary. Open and closed primaries. Nonpartisan primaries. The effect of the direct primary.

CHAPTER V. THE CAMPAIGN	77
-----------------------------------	----

Definition of a political campaign. Management of the campaign. Campaign methods. Use of money in campaigns. Sources of party funds. Regulation of the use of money in campaigns. Election laws. The ballot. Ballot reform. The short ballot. Absent voting. Preferential voting. Proportional representation.

CONTENTS

vii

	PAGE
CHAPTER VI. THE INITIATIVE, REFERENDUM, AND RECALL	105
Definitions and distinctions. Common features of the initiative. The referendum. The effect of the referendum upon the electorate, political parties, the machine, the ballot. The recall.	
PART III. ORGANIZATION AND FUNCTIONS OF STATE GOVERNMENT	
CHAPTER VII. THE STATE GOVERNOR	131
The executive department. The provincial governor. The state governor: election, term, removal. The powers of the governor. Civil-service laws. Martial law. The conference of governors. The strong governor. "The new rôle of governor."	
CHAPTER VIII. STATE ADMINISTRATION	149
Characteristics and composition of the executive departments. The relation of the heads of departments to the governor. State boards and commissions. Classification of boards according to services and powers. Internal organization of state boards. Types of departmental organizations. Relation of commissions to other departments. Reorganization of state administrative systems.	
CHAPTER IX. FUNCTIONS OF STATE ADMINISTRATION . .	168
The enforcement of law. Difficulties. Instruments. The administration of education. State authorities. Compulsory education. Free textbooks. Normal schools. State universities and libraries. State supervision of charities. Correctional institutions. Public health. Labor-law administration. Agriculture. Regulation of corporations. Public works. Finance and taxation. Miscellaneous.	
CHAPTER X. THE STATE LEGISLATURE	194
The importance of the state legislature. Omnipotence of the state legislature. Limitations upon state legislatures in the Federal Constitution. Limitations in state constitutions. Composition of state legislatures. Legislative apportionment.	
CHAPTER XI. THE LEGISLATURE AT WORK	207
The organization and character of the state legislature. The officers. Committee system. The legislative problem. The lobby. Bill-Drafting Bureau. Legislative procedure. Financial legislation. The influence of the organization in legislative procedure. The perversion of legislative action. The legislature and constitutional amendments. The effect of the initiative and referendum on the legislature.	
CHAPTER XII. STATE FINANCE	225
Importance of state finance. Sources of state revenue. Kinds of taxation. Constitutional restrictions on state taxing power. State expenditures. Financial legislation. State budget systems. The state debt.	

viii STATE AND MUNICIPAL GOVERNMENT

	PAGE
CHAPTER XIII. THE LEGAL SYSTEM OF THE STATES . . .	238
Sources of state law. Statutory law. International law. Common law. Equity. Rights of persons and property. Criminal law. Torts. Contracts. Domestic relations. Partnerships and corporations. Remedies.	
CHAPTER XIV. THE JUDICIAL SYSTEM OF THE STATES . .	268
Importance and functions of state courts. Justices of peace. Intermediate courts. Probate courts. Appellate courts. Special courts. The relation of the state courts to the federal courts. The structure of the courts. Choice and term of judges. Removal. Recall of judicial decisions. Other court officers. The jury.	
CHAPTER XV. THE PROCEDURE OF THE COURTS	291
Criminal cases. Civil cases, common-law procedure. Equity procedure. Appeals. Power of the courts to declare statutes unconstitutional. Judicial control of administration. The courts as agents of self-government.	

PART IV. COUNTY AND TOWN GOVERNMENT

CHAPTER XVI. THE EVOLUTION OF LOCAL GOVERNMENT IN THE UNITED STATES	309
The English basis of local government in the United States. Local government in America. The county type. The Southern parish. The New England town system. The mixed system. Extension of systems of local government. Recent developments in local government. Extent of local autonomy in the United States.	
CHAPTER XVII. THE COUNTY	317
General characteristics. County powers and functions. Government of the county. The county board. Administration of justice. Other county officers.	
CHAPTER XVIII. MINOR DIVISIONS OF LOCAL GOVERNMENT	333
The New England town. The town meeting. Town officers. Townships in the central states. County districts in the South and West. Villages and boroughs.	

PART V. MUNICIPAL GOVERNMENT

CHAPTER XIX. CHARACTERISTICS OF AMERICAN CITIES .	345
Definition of a city. Reasons for existence of cities. Area. Population. Sources of the increase of population. Characteristics of urban population. The moral standards of the city. Humanitarian movements in cities.	
CHAPTER XX. THE DEVELOPMENT OF MUNICIPAL GOVERNMENT IN THE UNITED STATES	359
The colonial period. Municipal development from 1775 to 1920.	

CONTENTS

ix

	PAGE
CHAPTER XXI. THE RELATION OF THE CITY TO THE STATE	374
The city corporation. Legal position of the city in the state. The city charter. Powers of the city. Liabilities of cities. Attitude of the legislature toward cities. The optional charter system. Regulated special legislation. Municipal home rule. The political relation of the city to the state. Fields in which state control is properly exercised. Methods of state control.	
CHAPTER XXII. THE CITY AS A POLITICAL UNIT	393
The municipal electorate. The municipal electorate in action. Municipal parties. Fusion. The initiative, referendum, and recall.	
CHAPTER XXIII. TYPES OF MUNICIPAL ORGANIZATION—THE MAYOR-AND-COUNCIL TYPE	409
The city council. Development of the office of mayor. Election, term, qualifications. Characteristics of American mayors. Legislative powers of the mayor. Administrative powers. Miscellaneous powers. Present position of the mayor.	
CHAPTER XXIV. TYPES OF MUNICIPAL ORGANIZATION—CITY GOVERNMENT BY A COMMISSION	430
The principles of the commission form of government. Origin and spread of commission government. Methods by which cities may adopt the commission type of government. Machinery of city government by commission. Popular control of the commission. Merits and faults of the commission form of government. Results of city government by commission.	
CHAPTER XXV. TYPES OF MUNICIPAL GOVERNMENT—THE CITY-MANAGER	445
Definition. Development and spread of the city-manager movement. Method of adoption. The Dayton city-manager plan. The Ashtabula plan. Results of the city-manager plan.	
CHAPTER XXVI. ADMINISTRATIVE DEPARTMENTS, OFFICIALS AND EMPLOYEES	454
The position of administrative departments. Development of administrative departments. Control of departments by council. Advantage of council committees as administrative bodies. Number of administrative departments. Choice and qualifications of heads of departments. Terms. Organization and correlation of administrative departments. Subordinate officials and employees. Politics and administration. Methods of improvement. Selection of municipal officials and employees. Principles of municipal civil service. Labor unions and city employees.	
CHAPTER XXVII. MUNICIPAL ADMINISTRATION. SAFETY	470
Functions and duties of the police. European and American conceptions of police functions. Difficulties of American police administration. Development of the police in the United States.	

State versus local control of the police. Organization of the police department. Expenditure on the police department. Fire losses in the United States. Fire prevention and protection. Organization of the fire department. Cost of the fire department. Development of city organization for the preservation of health. Legal basis of sanitary police powers. Organization of the health department. Relations of the health department to other departments. Functions of the board of health. Expenditure in health conservation. The building department.

CHAPTER XXVIII. MUNICIPAL ADMINISTRATION. CON-
VENIENCE 491

City planning. Composition and powers of planning board. The basis of a city plan. Difficulties of city planning. Cost of city planning. Importance of city streets. The street department in city government. Cost of streets. Special problems connected with streets. Methods of street construction and pavements. Importance of water supply. Requisites of water supply. Sources of water supply. Water purification. Public and private supplies of water. Water departments. Water finance. Importance of the disposal of wastes. Classification of the city's wastes. Sewage. Definition of public utilities. Important elements in a franchise. Types of public utilities. Relative merits of municipal and private operation of public utilities.

CHAPTER XXIX. MUNICIPAL ADMINISTRATION. EDUCATION,
CHARITIES, AND CORRECTIONS 522

Development of education in the United States. Organization of the school department. The school plant. Functions of the school system. School finance. Poor relief. Hospitals. Care of children. The department of charities. Corrections.

CHAPTER XXX. MUNICIPAL ADMINISTRATION. MUNICIPAL
FINANCE 533

Importance of municipal finance. Sources of municipal revenue. Rate of taxation. Collection of taxes. Municipal expenditures and appropriations. Methods of controlling appropriations and disbursements. Municipal budget. Accounting. Debts. Debt limits. Futility of legislative restrictions. Payment of municipal debts.

INDEX 551

STATE AND MUNICIPAL
GOVERNMENT

PART I

THE CONSTITUTIONAL BASIS OF STATE
GOVERNMENT

CHAPTER I

THE NATURE OF THE AMERICAN STATE

The United States is composed of forty-eight states, yet national questions rather than questions of state policy attract the greater attention. Foreign affairs, the tariff, the control of interstate commerce, and the marked tendency to extend federal authority in every field—a tendency which began after the Civil War and has increased with portentous rapidity—have led to concentration upon the policy and politics of the federal government at the expense of state and local government.

Yet it is well to remember that without the states the peculiar federal system of the United States could not exist. The Constitution was ratified by the people acting by states, and it can be amended not by a popular referendum but only by the consent of three fourths of the states. Thus the people in thirteen states—perhaps a pitiful minority of the whole population of the United States—can prevent the adoption of an amendment ardently desired by the vast majority of the people. The presidential electors are not chosen strictly on the basis of population, but from the states; and each state, whether large or small, has an equal representation in the Senate. The political unit of the United States is the state—with but few restrictions the states prescribe the qualifications for suffrage; the national elections are conducted under state laws by state officials. Thus, without the political action of the states the national government would run down and stop.

As will be seen, the Federal Constitution did not attempt to provide an all-inclusive frame of government to cover all the activities of its citizens. The framers of the Constitution believed that the greater part of the life of a citizen should lie beyond federal control. State and local government existed before the Federal Constitution was framed and were recognized and protected by it. It was felt that self-government

The political importance of the states

Recognition of the importance of state government in the Federal Constitution

was more assured in the hands of the states, that the government of the state would be more immediately subject to the control of its citizens than would the federal government, which, in 1787, seemed remote. Therefore the Federal Constitution not merely recognized and utilized the state governments but established limits beyond which Congress could not encroach upon the field of state control, and gave guarantees to state rights and state equality. State, not national, government is more important in the daily life of citizens, and state government is all-important in determining the powers and responsibilities of the smaller units of local government.

Variation of
states in
area and
population

The forty-eight states present bewildering variations. In area they vary from Texas with 265,896 square miles to Rhode Island with 1248. While the largest states have territories of greater extent than the French Republic or the former German Empire, the smallest state is not larger than many of the counties in the larger states. New York, with a population of over 10,000,000, has more than one hundred and twenty-five times as many people as Nevada, the least populous state, yet New York and Nevada have equal representations in the Senate. The population of New York is three times as great as that of Denmark or Switzerland and twice as great as that of Sweden, which are independent states. Nevada, the smallest state, with its population of 77,407, is outranked in population by more than eighty cities in the United States. The distribution of this population varies in the different states. In Rhode Island there are 566.4 persons to the square mile; in Massachusetts, 479.2; in New Jersey, 420.0; at the other extreme, Nevada has .7 to the square mile, Wyoming 2.0, Arizona 2.9, while New York, with her great population and great area, has 217.9. This mass of people is by no means homogeneous, as may be seen from the census. In the United States as a whole the percentage of foreign born is 14.5. It varies in the states from 29.2 per cent in Rhode Island, 28.3 per cent in Massachusetts, and 27.4 per cent in New York to only .4 per cent in North Carolina and .9 per cent in Georgia, Kentucky, and Mississippi. In the states just enumerated, as well as in the other Southern states, the homogeneity of the

population is complicated by the question of color. Thus, in South Carolina there are approximately 865,000 colored to 819,000 whites, and in Mississippi there are 935,000 colored to 854,000 whites.

In climate and resources the states present marked dissimilarities and variations. Thus, Maine in winter is literally as cold as Greenland, while in summer it has the temperature of France. Florida has the temperature of northern Africa, and in the northern states of the Mississippi Valley the temperature varies in winter from that of Greenland to one which is similar to southern France in the summer. These differences and dissimilarities in climate give varied natural resources, which in turn makes for a varied industrial life, and this in its turn affects the political life of the different states. Thus, Rhode Island, Massachusetts, Connecticut, New York, Pennsylvania, and Illinois rank high as manufacturing states and face problems inseparably connected with the massing of large laboring populations in small areas. Minnesota and the Dakotas, Kansas and Nebraska, are the great grain-growing states with a widely distributed population which is little affected by the problems of the manufacturing states. In the South the peculiar crops, cotton and tobacco, coupled with the presence of a large colored population present problems far different from those of the Northern states. The states afford a similar contrast in wealth: New York has an estimated wealth of \$25,000,000,000, Pennsylvania and Illinois \$15,000,000,000 each, California \$8,000,000,000, Iowa \$7,000,000,000, and Massachusetts \$6,000,000,000; while at the other extreme stands Nevada with a total wealth of about \$457,000,000.

In spite of these conspicuous variations the states present almost equally marked similarities. A traveler is not conscious of the boundary lines, for no customhouse marks them. Throughout the country there is one common language, not merely officially but actually. In spite of minor differences there is a common system of education, extending from the primary schools to state universities. Nowhere is there an established church. Everywhere there is freedom of religious worship and a clear separation and a jealous demand that no

Climate and
resources

Similarities
of states

religion, church, or denomination should attempt to control the political action of the state. In all the states there is a similar system of state government. All state constitutions, in spite of numerous obvious though superficial variations, resemble the Federal Constitution in the jealous separation of the departments of government. All the states alike are subject to the supremacy of the Federal Constitution, with the rights which it guarantees to all citizens of the United States. Federal coinage, federal laws, and federal jurisdiction are found in every state. Constitutional amendments, such as the Eighteenth and Nineteenth Amendments, may force an unwilling state to adopt prohibition or to extend the suffrage to women. Through the power to tax and to control interstate commerce the federal government is more and more imposing upon the states a common standard in industry and even in morals. Thus the pure-food law, the federal child-labor law, the law prohibiting the transportation of lottery tickets, and the white-slave law reveal the extension of federal activities.

American,
not state,
nationality

Moreover, apart from the official and governmental undertakings, there are many tendencies toward a common life. The recent movement for Americanization emphasizes the commonwealth of the United States rather than the individual peculiarities of the various states. National industries spread their products throughout the whole country, and the same articles of use and apparel may be found in Maine and California. National magazines and papers spread a common standard of culture and similar ideas from Washington to Florida. Throughout the country there are the same national political parties, national platforms, and national aims. Throughout the Union there is a single nationality. The Federal Constitution was adopted before the variations of different states had developed individual nationalities. The advantages of union and the protection of the federal government were recognized, and in spite of the peculiarities of different states a spirit of unity developed which was strong enough to survive the shock of the Civil War and which subsequent experiences have strengthened.

THE STATES AND THE NATION

The American states are bodies politic. A good definition of a body politic is found in the preamble to the Massachusetts constitution in these words:

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

The state
bodies
politic

The purposes for which a body politic exists are well set forth in the preamble of the Constitution of the United States:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity . . .

In other words a body politic exists for the purpose of government, and its powers may extend to complete control over the lives, liberty, and property of its people. Not every body politic may possess this complete control; the American state does not, for, as will be seen, the Constitution sets certain limits upon the power of the state in dealing with the life, liberty, and property of any of its citizens. (Thus the Fourteenth Amendment declares that no state shall "deprive any person of life, liberty, or property, without due process of law.") While the American states may thus not possess the unlimited authority of sovereign bodies politic, no group of people, except a body politic, possesses rightfully any such power. Bodies politic are characterized by the kind rather than by the degree of power which they hold. They may have this power to an unlimited extent and thus be completely sovereign and independent; on the other hand, they may be subject to certain limitations which restrict their independence and limit the exercise of their power.

The
American
states not
sovereign
bodies
politic

The American states are not sovereign, independent states. Their independence was sacrificed at their ratification of the Constitution, and in like manner their sovereignty was restricted. Until the Civil War this point was disputed. Political theorists and statesmen took different sides and argued with equal plausibility that the United States was sovereign or that the United States was composed of a group of sovereign states which possessed all political power not surrendered by the express words of the Federal Constitution, and that this power included the right at any time to secede from the Union. The appeal to arms decided the issue. Since the Civil War no one can question that the people of the United States, and not the states nor the people of any state, possess the ultimate sovereignty. In recent times this has been strikingly illustrated by the passage of the Eighteenth and Nineteenth Amendments to the Constitution, which drew upon the powers reserved to the states or the people and enforced upon unwilling states the prohibition of the sale or manufacture of alcoholic beverages and the extension of the suffrage to women.

Federalism

The Constitution of the United States created a federal state. It did not in itself provide a scheme of government to control all the relations of life; it did create a body politic, partly national and partly local. The national part is to be found in the federal government, the local part in the states. What the Constitution does is to divide the totality of the powers of government between the federal government and the states. This division, however, is not made upon the same basis. The powers of the federal government are granted to it by the Constitution. The powers of the states are inherent; they receive no new powers from the Constitution; their rights are protected, their powers reserved to them.

Distribu-
tion of
powers.
Powers
granted to
the national
government

As has been pointed out,¹ the powers granted to the federal government are chiefly political. The prohibitions upon the federal government are largely in the nature of preventing it from interfering in the realm of domestic affairs. One great

¹ F. J. Stimson, *The American Constitution*, passim; also *Federal and State Constitutions of the United States*, pp. 106-118. Everett Kimball, *The National Government of the United States*, pp. 50-55.

exception, however, is found in the Fourteenth Amendment, by which the federal government is made the judicial censor of state legislation lest such might deprive the citizens of the United States of "life, liberty, or property, without due process of law."

The prohibitions upon the states are of two sorts. In the first place, certain definite prohibitions are laid upon them. These are found in Article I, Sect. x. In general they prohibit the states from exercising powers which might interfere with those already granted to the federal government, and they may be roughly classified under several heads:

1. Foreign and military affairs. The states are prohibited from entering into treaties, alliances, and confederations, and no state may enter into an agreement or compact with any other state or with a foreign state unless Congress assents. States may not grant letters of marque or reprisal, keep troops or ships in time of peace, or engage in war unless actually invaded.

Prohibitions
upon the
states:

(1) Foreign
and mili-
tary affairs

2. Prohibitions upon state control over the monetary system. No state may coin money or make anything but gold or silver legal tender. In addition, a state may not emit bills of credit. A bill of credit "must be issued by a state on the faith of the state and designed to circulate as money. It must be a paper which circulates on the credit of the state; and so received and used in the ordinary business of life."¹ However, a state may charter banks and trust companies and give to them the right of issuing money, but these state bank notes are not considered bills of credit. In 1866 Congress effectually prevented the issuance of such notes by levying a tax of 10 per cent upon all bank notes issued by banks other than the national banks chartered by the United States.

(2) Mone-
tary system

3. Prohibitions upon taxation. With the intention of protecting Congress in its power to regulate all foreign and domestic commerce, states are prohibited from levying import or export duties. States still possess the power to tax property within their jurisdiction. Very early the question arose as to when an article imported into a state ceased to be under the protection of the commerce clause and became a part of

(3) Taxation

¹ *Craig v. Missouri*, 4 Peters, 410, 431, 432.

the general property of the state. In 1827 Chief Justice Marshall held:

It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty upon imports to escape the prohibition in the Constitution.¹

This very seriously limits not merely the power of the state to levy taxes but also to pass laws under the police power regulating the health or morals of its citizens. For the purpose of its inspection laws, however, a state is allowed to levy fees, the net proceeds of which shall be for the use of the treasury of the United States. States, furthermore, are forbidden to lay any duty on tonnage; that is, upon the entire internal capacity or contents of a vessel, expressed in tons of one hundred cubic feet each. States may tax ships of their citizens as property, valued as such, but they may not tax ships as instruments of commerce.²

[Taxation of
instruments
of the
federal
government]

Although not expressed in the Constitution, states are prohibited from taxing the instruments of the national government in such a way as would interfere with their efficient use. The earlier doctrine restrained the states from levying taxes of any sort upon such federal instruments since Marshall held that the power to tax was the power to destroy. But in 1869, in *National Bank v. Commonwealth*,³ the modern rule permitting taxes which do not interfere with the functions of the instruments was established.

(4) Con-
tracts

4. Property is furthermore protected against state action by the injunction that no state shall pass any law impairing the obligation of contracts. A contract is extensively defined by the courts; briefly, it means an agreement enforceable at

¹ *Brown v. Maryland*, 12 Wheat. 419, 441-442.

² *State Tonnage Tax Cases*, 12 Wall. 204.

³ 9 Wall. 353.

law. In 1819 Chief Justice Marshall, in the Dartmouth College case, held that a charter granted by a state was in the nature of a contract protected by this clause. This, apparently, put beyond the power of the state legislature the modification of the charters and grants which earlier legislatures had made. The states took prompt action, and in most of their constitutions is found a provision declaring illegal any charter or grant which does not contain the express right of the state to modify or annul such grants. Moreover, the courts have held that charters and grants, like all other private property, may be acquired by the states provided compensation is given. It has been held, furthermore, that charters and grants are subject to the police power of the states.

5. The personal rights of the citizens of a state are protected against state legislation by certain constitutional prohibitions. A state may not grant a title of nobility; it may not pass a bill of attainder; it may not pass an ex post facto law. A bill of attainder is a legislative act which inflicts punishment without a judicial trial. An ex post facto law is not a retroactive law, but is one which makes an act already performed criminal, or which increases the penalty for a crime or alters the procedure to the disadvantage of the accused. (5) Personal rights

By far the most important limitations upon state authority are found in the Fourteenth Amendment. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This amendment was designed to protect the newly emancipated slaves, and in the early cases under it the court held strictly to that intent. Later interpretations, however, have extended it to all classes of citizens and persons, including corporations. The Fourteenth Amendment

The courts have extensively interpreted the words "life," "liberty," and "property." The word "liberty" has come to mean the freedom of an individual to do what he desires within the limits of a law properly passed and properly enforced; within these limits all persons are free alike from private or Life, liberty, and property as interpreted by the courts

governmental interference. Liberty means freedom of contract, the right to work, the right to acquire property. Property also has been interpreted to include not merely tangible but intangible property. Due process of law is never completely defined. It means what the judge thinks is just and equitable under the circumstances, viewed in the light of previous decisions.¹ Equal protection of the laws does not require that all persons and things should be treated alike. It allows the state legislature to make classifications and distinctions provided such classifications and distinctions are based upon fair and reasonable grounds and do not show unjust discriminations.

Privileges
and immu-
nities of
United
States citi-
zens as in-
terpreted by
the courts

The Fourteenth Amendment also prevents the states from abridging the privileges and immunities of the citizens of the United States. What these privileges and immunities are has never been inclusively defined by the courts, but in the *Slaughter House Cases*² they have enumerated some of them as follows:

. . . We venture to suggest some which owe their existence to the Federal Government, its national character, its Constitution, or its laws. One of these is well described in the case of *Crandall v. Nevada*, 6 Wall. 36. It is said to be the right of the citizen of this great country, protected by implied guaranties of its Constitution, "to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land offices, and courts of justice in the several States." . . .

Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guarantied by the Federal Constitution. The right to use

¹ For a brief description of this phrase see Beard, *American Government and Politics*, pp. 439, 441.

² 16 Wall. 36, 79-80.

the navigable waters of the United States, however they may penetrate the territory of the several States, and all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State. One of these privileges is conferred by the very article under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona fide* residence therein, with the same rights as other citizens of that State. To these may be added the rights secured by the thirteenth and fifteenth articles of amendment, and by the other clause of the fourteenth, next to be considered. . . .

The Constitution also imposes certain obligations upon the states in dealing with each other. "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State."¹ This means, in a civil case, that when the courts of one state have given judgment such judgment will be recognized and enforced by the courts of every other state without a new trial. It means, moreover, that contracts legally entered into in one state are binding and enforceable in the courts of another.

Obligations imposed on the states: The "full faith and credit" clause (1) in judgments

In the matter of divorce this clause has not been altogether satisfactory. By this clause a state is required to recognize a divorce granted in any other state even for reasons for which the laws of the first state would not allow a divorce. The only restriction which the courts have upheld is that the state granting the divorce should have jurisdiction over the parties; that is, that the party should have a bona-fide residence within the state and that proper notice of the suit should be given.

(2) in divorce cases

The Constitution provides for the surrender of persons charged with treason, felony, or other crimes upon the demand of the authorities of the state where the crime was committed.² While in its form this obligation is mandatory, actually it is discretionary with the governor of the state whether or not the extradition shall be granted.³

(3) in extradition

¹The Constitution of the United States, Article IV, Sect. i.

²Ibid. Sect. ii, clause 2.

³See W. W. Willoughby, *The Constitutional Law of the United States*, Vol. I, pp. 222-224. C. A. Beard, *Readings in American Government and Politics*, p. 148, gives examples of extradition proceedings.

States
limited by
delegation
of powers to
federal
government

A second limitation upon the powers of the states is found in the delegation of certain powers to the federal government.¹ Some of these powers are the exclusive prerogative of the federal government, and the states are prohibited in their exercise; for example, the war power, the treaty-making power, and the power to regulate commerce, both interstate and foreign. Other powers indirectly control the social and personal relations of the citizens of the states. Thus, as has been mentioned, certain laws which have been passed under the power granted to the federal government to levy taxes and to regulate commerce have effectually prevented state action of one sort or compelled state action of another. The power given to the federal government to regulate post offices and post roads has been extended so that, by the fraud orders, the citizens of the states are protected by federal rather than state laws against illegitimate financial operations, and in war time a quasi censorship was established over the press. The taxing power granted to the federal government may be used directly to prevent states from allowing certain kinds of finance or industry, as was shown in the 10 per cent tax upon notes issued by state banks and the taxes levied upon matches made from white phosphorus, and in order to enforce the federal conception of child labor, not that of the states. Indirectly, the federal taxing power, operating upon the same sources of revenue as the states, may practically compel the states to seek other systems and different methods of finance.

Powers
reserved to
the states

All other powers of a body politic are reserved to the states or to the people. The general characteristic of these powers so reserved is that they deal with the social and personal rights of the citizens. The federal government not only is not granted such powers, but by express prohibitions is prevented from entering this field. Article I, Sect. ix, of the Constitution enumerates the express prohibitions which the framers of the original Constitution thought adequate. These are extended and made more explicit by the first ten amendments—the so-called federal bill of rights. Freedom of religion,

¹ This is concisely treated in A. N. Holcombe, *State Government in the United States*, pp. 12-14.

speech, press, assembly, petition, and the right to bear arms are protected against federal action. Excessive bail and cruel punishments are prohibited. The right of jury trial with the privilege of counsel and witnesses is guaranteed, and the writ of habeas corpus may not be suspended except in case of rebellion or invasion. Congress may pass no bill of attainder or ex post facto law, grant no title of nobility, levy no export duty, give no preference to the exports of one state over those of another, nor levy any direct tax except an income tax unless apportioned according to the population. By the Eleventh Amendment the states are protected from suits begun by citizens of another state or of foreign states.

In one field, however, the states maintain, in theory at least, their full and unrestricted power. This is in the exercise of the police power. No adequate and comprehensive definition has been made of this power. The Supreme Court has said that it was "nothing more nor less than the powers of government inherent in every sovereignty . . . that is to say, the power to govern men and things."¹ Again, the court has defined the police power as the right of the states to make laws which "relate to the safety, health, morals, and general welfare of the public."² Actually, there are fundamental limitations upon the free exercise of this power by the states. In the first place, the Fourteenth Amendment subjects all such regulations to the scrutiny of the Supreme Court lest any citizen should be deprived of his life, liberty, or property without due process of law, or denied the equal protection of the laws. In the second place, certain direct prohibitions in the Constitution limit this power. The states are not free to deal with contracts as they may choose, slavery is prohibited, alcoholic beverages forbidden. In the third place, the federal government within the spheres granted to it has the power of government. That is, it has the power to pass regulations controlling both the persons and things within these spheres. This is strikingly illustrated by the federal regulations of commerce. The anti-trust laws and the federal trade commission

¹ *License Cases*, 5 How. 504, 583.

² *Lochner v. New York*, 198 U.S. 45, 53.

regulate the organization of business. Numerous statutes determine the conduct of commerce, the hours of labor, and even, in the Adamson Law, the wages. Federal law, moreover, prohibits under definite penalties the transportation of certain articles, and this prohibition very effectually controls their consumption and use by the citizens of the states. Hence, even in this field, where theoretically the states are supreme, there is a growing tendency to extend the activities of the federal government.

Federal
supremacy

The states in all their activities are subject to the limitations of the Federal Constitution:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.¹

Federal supremacy acts directly and indirectly, positively and negatively. It acts directly when, by the Federal Constitution, the treaty-making power, or a federal law, it operates so as to compel the action of a citizen of a state. The payment of the federal income tax, the registration conducted under the draft law, may be taken as examples of direct, positive federal supremacy. It acts negatively when one of the federal prohibitions prevents the action of a state law. Thus the prohibition upon a state from passing a law which violates the obligation of contracts has frequently prevented a state legislature from taking the action it desired. It acts indirectly when, as in the case of the regulation of commerce, absence of federal regulation has been held to prohibit direct state regulation.

Federal supremacy acts not upon the states as bodies politic, but upon the citizens of the states, who are at the same time citizens of the United States. It is not addressed to state governments, but to individuals, therefore it is generally enforced by judicial process. Federal supremacy is asserted in a case at law and trial in the federal courts, followed by a decree

¹The Constitution of the United States, Article VI, clause 2.

enforceable by the United States marshal or, in the last instance, by the United States troops. Specifically, cases to which the United States is a party or cases in which a federal law or constitutional right has been questioned may be transferred to the federal courts for determination.

By the original, unamended Federal Constitution, as first adopted, the national government concerned itself with national affairs, the state governments with the domestic relations of their citizens. Fundamental rights were protected against invasion by either government. The first ten amendments were designed to limit the federal government and protect the governments of the states. Judicial interpretation extended the powers and spheres of federal activity, and experiences of the Civil War resulted in the adoption of amendments which apparently made the federal government the censor of state legislation. Since that time the centralizing tendencies have steadily grown. Constitutional amendments and federal legislation alike have decreased the spheres of state activity and limited state control. Yet in spite of these restrictions it is to the state rather than to the federal government that the citizens look first.

CHAPTER II

STATE CONSTITUTIONS

Importance
of state con-
stitutions

Every American state has a written constitution.¹ This constitution is the basis of the political institutions of the state. It organizes the frame of government; it grants powers to the various departments of government, and, equally important, prescribes limitations upon the exercise of these powers; it determines the electoral qualifications and guarantees to individuals the possession of the rights of liberty and property, which are beyond the power of the state government to touch. State constitutions are the expression of the sovereign rights of the people of the states—rights which are limited only by the Federal Constitution, treaties, and federal laws. In the life of the people of a state the state constitution is thus the most important and fundamental document.

Origin of
state con-
stitutions

The state constitutions are the oldest political documents in the United States. Although like the Federal Constitution, they were not patterned upon it. Rather, the Federal Constitution copied and adapted many of the principles of the state constitutions. The latter developed from the colonial charters, which in turn were modeled upon the charters of the great mercantile companies of the sixteenth and seventeenth centuries. These charters, modified from time to time by fresh grants from the king, by acts of Parliament, and, particularly, by actual experiences gained in the colonies, served as the

¹ A detailed analysis and careful treatment of state constitutions is to be found in J. Q. Dealey, *The Growth of American State Constitutions*. See also W. F. Dodd, *The Revision and Amendment of State Constitutions*; R. S. Hoar, *Constitutional Conventions*; J. A. Jameson, *A Treatise on Constitutional Conventions: their History, Powers and Modes of Proceeding*. The constitutions of all the states up to 1000 are printed in F. N. Thorpe, *Federal and State Constitutions*. The volumes of the *American Year Book* give a summary of the amendments adopted each year.

model for the state constitutions which were adopted in the Revolutionary period and in the last quarter of the eighteenth century. Only one state, Massachusetts, retains the constitution framed during this period, and that has been extensively amended and revised. But all the states, even in their most modern and latest constitutions, hark back to the principles and framework of their early constitutions.

The first movement for a state constitution came in Massachusetts.¹ On June 9, 1775, the Continental Congress² advised the revolutionary convention of Massachusetts to summon from the towns representatives who should choose a council and exercise the powers of government. This form of government sufficed for Massachusetts until the adoption of the present constitution in 1780. In 1776 the Continental Congress again advised the states that they should "adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general."³ Connecticut and Rhode Island were so content with the framework of government established by their charters that they continued to operate under them until the nineteenth century.⁴ The other states, however, formulated written constitutions during the Revolutionary period.

The method by which the first state constitutions were framed emphasizes the fact that these constitutions were revolutionary in character. With the exception of the constitution of Massachusetts, none of them were submitted to the people for ratification. All were framed in bodies existing without legal authority or by assemblies summoned by these revolutionary bodies. The consent of the people, backed by the success of the revolutionary army, was the sanction which caused the general acceptance of these documents and the governments established by them. In the case of Massachusetts and New Hampshire, constitutional conventions were

The first
state con-
stitutions

Formulation of the
revolutionary consti-
tutions

¹J. Q. Dealey, *The Growth of American State Constitutions*, chap. iii.

²*Journals of the Continental Congress*, Vol. II, pp. 83-84.

³*Ibid.* Vol. IV, p. 342.

⁴Connecticut adopted a constitution in 1818, and Rhode Island in 1842.

summoned by the revolutionary bodies, and after one failure in Massachusetts and two in New Hampshire they succeeded in producing constitutions which were accepted by the people. In South Carolina the revolutionary convention framed and proclaimed the constitution itself during March, 1776. In 1777 the legislature prepared a new constitution which was put into effect by the next assembly. In Delaware, New Jersey, Pennsylvania, and Virginia the revolutionary conventions framed the constitutions. In Georgia, Maryland, New York, and North Carolina the revolutionary congresses summoned conventions which framed and promulgated constitutions without submitting them to the people.

Chief provisions of the early constitutions:

(1) Method of amendment

Five of these thirteen constitutions prescribed no method of amendment,¹ but this did not prevent the legislatures from altering the constitutions² themselves or from providing methods of amendment. This absence of definite methods of amendment indicated lack of consideration rather than any conscious attempt to create sovereign legislatures with constituent powers. The adoption of subsequent constitutions and later amendments early developed the method of formulation, either by the legislatures or by conventions, and of ratification by the people.

(2) The government in early constitutions

The frames of government established by these constitutions had many similarities. All the states provided for an executive. In the New England states and New York the governor was elected by the voters; elsewhere, by the legislatures. South Carolina provided for a two-year term, Delaware and New York for a three-year term. In the other states the governor was chosen annually. Most of the states placed restrictions upon his reelection. More important, however, than the method of choice of governor was the fact that much, if not most, of the executive prerogative of the colonial governors was transferred to the legislatures. Thus the fear and jealousy which had been inspired by the colonial governors appointed by England resulted in the creation of a state governor so

¹New Jersey, New York, North Carolina, Pennsylvania (1790), Virginia.

²This was done in New Jersey, although prohibited by Sect. xxiii.

weak that the development of the executive office has been a constant adding to his powers.

In every state constitution the legislature was given the predominant place. As has been seen, in some states it assumed the prerogative of revising the constitution. In all states there were few limitations to its power. Only in Massachusetts was the governor given even a suspensive veto. In all the states except Georgia, Pennsylvania, and Vermont the legislature was bicameral, and in the second constitutions of those states this form was adopted.¹

(3) The legislature in early constitutions

The courts were practically unchanged from colonial times except that the judges were no longer named by the crown. In Delaware and Pennsylvania they were appointed by the governor; in Maryland, Massachusetts, and New Hampshire by the governor and council; in New York by a committee of four senators. Judges were elected by the legislature in New Jersey, North Carolina, South Carolina, and Virginia and by the voters in Georgia.

(4) Judicial system

In Connecticut and Rhode Island the government provided by the royal charters was substantially unchanged. At annual elections the people chose the governor, deputy governor, and a bicameral assembly. The assemblies had practically all power, supervising the activities of the governor and electing the judges. Since there was no provision for the amendment of charters, the assemblies, on separation from Great Britain, became the legal source of all the powers of their respective states.

Connecticut and Rhode Island

FUNDAMENTAL PRINCIPLES IN STATE CONSTITUTIONS²

The preambles to the state constitutions express the idea of popular sovereignty in the first sentence. In most of the documents the first words of the preamble are "We the people . . . do ordain and establish." In spite of the fact that the first state constitutions were framed by revolutionary

Popular sovereignty

¹ The constitution of Vermont provided for a single-chambered legislature, which was continued until 1836.

² For a very suggestive and concise treatment of this subject see A. N. Holcombe, *State Government in the United States*, pp. 21-40.

bodies or the legislatures, and the vast majority of them not submitted to the people for ratification, popular sovereignty was recognized implicitly and explicitly in the preambles to the second revised constitutions. More important than the extent of powers exercised by the legislatures or by any of the instruments of government was the recognition that in the last analysis the people, not the legislature, were sovereign. Popular sovereignty asserted in state constitutions does not mean state sovereignty, but the power of the people to make or to alter the frame of government under which they live. It means that the people have the right to protect themselves from the instruments of government they created by reserving to themselves the rights and privileges which would be beyond the power of the government to touch. It means that the people, not the legislature nor any department of government, might draw upon these rights and privileges and thus extend the sphere and activities of the government. As Professor Holcombe well says, quoting Lincoln, "It means government of the people, by the people, and for the people."

Reservation
of rights to
the people

All state constitutions contain a bill or declaration of rights. This is only a means of emphasizing the doctrine of popular sovereignty and of placing certain rights beyond the power of the state governments to usurp. It might be argued, as Hamilton did with regard to the first ten amendments to the Federal Constitution, that such bills or declarations of rights were unnecessary, since the governments had no powers other than those granted them. But in the earlier constitutions there had been few limitations upon the powers of the legislatures, and the states were well advised in placing certain rights of civil liberty beyond the possibility of legislative control. The rights so safeguarded included guarantees of life, liberty, property, and happiness; freedom of conscience, speech, press, and assembly; habeas corpus and the judicial rights which had developed in England; guarantees against unreasonable searches, seizures, imprisonment, or bail; and the right to "reform, alter, or abolish forms of government." Since most of these guarantees are repeated in the Federal Constitution as limitations upon the federal government or upon the states,

the citizens of the American states are protected in their fundamental privileges against the action of both state and federal governments and, by the Fourteenth Amendment, even against action by the majority of the people of the state.

Another fundamental principle of the state constitutions is the supremacy of law. This was not an American invention, but a heritage directly from England. The rule of law in England¹ means, first, that no man shall be punished except for a distinct breach of law established in the ordinary legal manner before the ordinary courts. In the second place, it means that all persons, whether officials or not, are subject to the law. As expressed in the constitution of Massachusetts, it signifies "that all shall be governed by certain laws for the common good."² Or, as it is expressed more at length in the Declaration of Rights, "each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws."³ Law includes in state governments not merely the by-laws and ordinances of subordinate lawmaking bodies but the statutes passed by the state legislatures. Even more, it embraces the constitution itself, which is the supreme law within the state. Concretely, a law is a rule which the courts will enforce. But in the case of a conflict of laws the courts will unhesitatingly enforce the higher law. Thus, for example, in a conflict between an act of the legislature and a principle of the constitution, the courts will without fail enforce the constitution and declare such an act "unconstitutional and void."⁴

Supremacy
of law

If, however, law is simply the rule which the courts enforce, popular sovereignty would be denied and the supremacy of the judiciary would be established. From earliest times all decisions of the judges have been subject to alteration, either by the passing of a statute or by the adoption of a constitutional amendment. The ultimate sanction for the rules which the courts enforce and for the supremacy of law is not to be

The courts
subject to
popular
sovereignty

¹A. V. Dicey, *The Law of the Constitution*, Part II, chap. iv.

²Preamble to the Constitution of Massachusetts.

³Article X.

⁴See Everett Kimball, *National Government*, pp. 16-17, for examples.

found unchangeable for all time in the principles of English common law, the acts of the legislatures, or the dogmas of the constitutions, but is in the final expression of the popular will.

Separation
of powers of
government

All the early state constitutions either implicitly or explicitly adopted the principle of the separation of the powers of government. The idea that there were three distinct functions of government—legislative, executive, and judicial—was stated by Montesquieu.¹ In colonial times the citizens had regarded the possession of legislative power by their assemblies as one of their most successful weapons against the exercise of the arbitrary power of the governor. But neither in the colonial charters nor in the constitutional practice of Great Britain was there an absolute and complete separation of the executive and legislative powers, nor is such division possible.

Separation
of powers as
expressed in
early con-
stitutions

Nevertheless, in the Virginia constitution of 1776 the principle was expressed in these words: "That the legislative and executive powers of the State should be separate and distinct from the judiciary."² In the Massachusetts constitution of 1780 it is amplified as follows:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.³

Separation
not absolute

But however explicitly stated, the division was not absolute in any state constitution. In that of Massachusetts (1780) and of New York (1777) the powers and functions of the different departments were clearly defined, but each department, in the distribution of powers and functions, received powers and duties of all three kinds. Thus, in New York the legislature exercised, through the power of impeachment by the lower house, some judicial authority, and four members of the upper house chosen by the lower formed the council of

¹ Spirit of Laws, Bk. XI, chap. vi.

² Bill of Rights, Sect. v.

³ Declaration of Rights, Article XXX.

appointment which shared some of the governor's executive power. The governor, through his right to convene and prorogue the legislature and by messages to call its attention to important matters, exercised legislative control to some extent. While acting with the judges as a council of revision upon the acts of the legislature, he had exercised some judicial power. In the other states there was almost frank legislative supremacy, and the theoretical principle of the separation of departments seems of little value.

Nevertheless the principle remained. The executive had no power by ordinance to make the laws nor the legislature to enforce them. Separation of powers does not require that the three departments should be entirely unconnected with each other, but, as was later expounded in "The Federalist," it meant that the whole power of one department should not be exercised by the same body which possessed the whole power of another department.¹ Stated in this way, the division of powers as expressed in state constitutions was a wholesome restraint upon the danger that any one department might misrepresent the popular will and subvert the rule of law.

The actual principle of separation of powers

The principle of checks and balances, which was fully developed in the Federal Constitution and in the later state constitutions, did not appear in the original constitutions of the states. As has been pointed out, legislative supremacy was quite generally the rule. Nevertheless, even in the first constitutions, through the granting of powers to different departments which were not similarly constituted, an imperfect set of checks and balances was provided. The development of the powers of the judiciary, however, made this system more complete.

The doctrine of checks and balances

From 1778 the judiciary had regarded the state constitutions as limits set upon the power of the legislatures. In the enforcement of the constitutions the courts prevented the different departments from exercising powers and functions not granted to them and kept them within the bounds established by the fundamental law. This was the logical development of the rule of law, which, if impartially enforced, applied

Judicial review strengthened the principle of separation of powers and popular sovereignty

¹ See "The Federalist," No. 47.

not simply to individuals but to instruments of government. It did not constitute, however, the judiciary as the sole and final arbitrator. The people themselves, through their power to amend the constitution, were able to control or alter the decision of the judges. Yet until the people act through their power to amend the constitution the decision of the judges is final in the interpretation and the application of the constitution.¹

Classifica-
tion of state
constitu-
tions

State constitutions may be variously classified—chronologically, geographically, or by the character of the governments they establish. Professor Dealey has offered a classification which seems suggestive:²

The six constitutions of the New England states of which that of Massachusetts is the best; seven constitutions formulated during the twenty-five years preceding the close of the Civil War, these are democratic in spirit but are in need of revision; twenty-five constitutions made or revised since the war, representing readjustments necessitated through reconstruction or through newer economic conditions; and finally the ten constitutions of the new mining or agricultural states west of the Mississippi, admitted since 1889. The radicalism prominent in this section of the country may best be seen in the constitutions of Oklahoma and Arizona and in the many amendments introduced since 1902 into the constitutions of Oregon and California.

Similarity
of state con-
stitutions

All these constitutions have certain features in common. The framework of government is everywhere the same, although there are differences in the details of its composition. All the states provide for the three departments of government and pretend to adhere to the principle of the separation of

¹ Because of the difficulty of amending certain constitutions and thus bringing decisions of the judiciary more quickly in harmony with the desire of the people, the doctrine of the recall of judicial decisions was suggested by ex President Roosevelt in 1912. This had the advantage of making it possible for the people to correct an unpopular decision in a particular case more quickly than could be done by a constitutional amendment. It had the grave disadvantage, however, of acting on a particular case rather than of establishing a constitutional principle, as is done by an amendment (see pages 31-36).

² *Cyclopedia of American Government*, Vol. I, p. 438.

powers. All constitutions contain a bill or declaration of rights by which certain matters are reserved to the people and put beyond the power of the legislature to alter. All are alike in the process of development, which tends to place limitations upon the legislature, to increase the authority of the executive, and to transfer powers from both the executive and the legislature to the electorate. To the newer and more radical constitutions, and even to the older ones, amendments have been added which carry the doctrine of popular sovereignty to its logical extreme and enable the people, by means of the initiative and referendum, to make their will immediately effective.

All constitutions have grown longer. Framed at the end of the eighteenth century, the constitution of New Jersey contained but twenty-five hundred words. In the first years of the twentieth century Oklahoma adopted a constitution of over fifty thousand words. The reason for this increasing length was threefold. Legislative supremacy proved unsatisfactory. The people of the states came to distrust and fear legislative action rather than to revere and place confidence in the representatives they had elected. Consequently, at almost every revision of any constitution additional restrictions are placed upon the legislature. Not only was positive legislative action dreaded, but the constitutional conventions feared that the legislatures would not take the action they desired. As a result matters are found in the constitutions which would more properly be expressed in statutes. Thus, for example, the constitution of Oklahoma contains long sections regarding corporations and has more of the characteristics of a code of laws than of a framework of government.

A second reason for the longer constitutions is found in the changed social and economic life of the state. New kinds of wealth have been created; new evils have developed. To protect or to subject these to the control of the state and to allow the state to cope with these fresh conditions, additional powers have been granted and private property and personal liberty subjected to new restraints. Finally, the growing complexity of modern life and the desire to submit all phases of this to popular control has led to the creation of numerous

Increasing
length of
constitu-
tions due to:

(1) Restric-
tions on
legislatures

(2) Changed
social and
economic
conditions

officers and officials with duties and functions which required extended definition.

Long and detailed constitutions tend to break down the distinction between constitutional and statutory law

The tendency to increase the length of state constitutions and to include in them materials which might more properly be found in statutes is unfortunate. It not merely confuses the distinction between fundamental law and statutory enactments but frequently puts into permanent form measures which are of temporary importance or whose unimportance is not foreseen. Moreover, the process of constitutional amendment in all states is more difficult than legislative enactment, and in some states it is even painfully slow. Thus, it may seriously hamper a state in a crisis and prevent the immediate exercise of popular control.

Contents of a typical state constitution:

(1) The preamble

(2) Ratification clause

(3) Temporary provisions

(4) Bill of rights

[Traditional bills of rights]

A state constitution usually consists of nine parts:

The preamble and enacting clause stands first and contains the assertion of the doctrine of popular sovereignty, in that the constitution is ordained and established by the people of the state.

A ratification clause follows with the signatures of the officers of the ratifying or formulating authority.

Oftentimes there is a schedule of temporary provisions.

A bill of rights is invariable in the later constitutions, and tends, like the constitutions themselves, to increase in length. Originally a typical bill of rights contained clauses protecting the private rights of the individual, which were inherited from the constitutional development of England. These bills usually declared for the freedom, equality, and independence of the citizens; popular sovereignty; the right of the people to change and alter their government; the separation of the departments of government; the right of the individual to the judicial privileges which were traditional in English procedure—namely, to demand the cause and nature of his accusation, to be confronted with his accusers, to obtain evidence in his own behalf, to have a jury trial; freedom of press and of conscience; the right to bear arms. They also contained prohibitions against the suspension of laws without the consent of the representatives, against excessive bail, fines, and cruel and unusual punishments, and against general search warrants.¹

¹ Drawn from the Bill of Rights of the constitution of Virginia, 1776.

In addition to these fundamental and traditional rights, the more recent constitutions sanction new developments in judicial procedure. For example, in Oklahoma prosecutions for felony or misdemeanor upon information, as well as indictment, are sanctioned; in certain courts the jury may consist of but six men; and in civil cases, and criminal cases involving crimes less than felony, a verdict of three quarters of the jury is sufficient.

[Modern additions to bills of rights]

In general, private property is carefully guarded; yet in the Oklahoma constitution the state may engage in any business except agriculture, while in the forty-ninth amendment to the constitution of Massachusetts, adopted in 1918, the legislature is given power, on making just compensation, to take lands for the conservation, development, and utilization of the agricultural, mineral, forest, water, and other natural resources. In Oklahoma corporations are denied several privileges and immunities secured to natural persons, their records are subject to the inquisitorial power of the state in unrestricted searches, and their officers may be forced to give testimony which might be incriminatory.

[Modern attitude toward private property]

In the framework of government the constitution provides for the establishment of the three departments of the government, grants them their powers, and prescribes limitations upon the exercise of these powers. As has been said, in all the states the main outlines of government are the same, although there is considerable variation in details. Under this head, moreover, are placed the provisions for rural, county, and municipal government, more or less explicitly framed. The suffrage clause and any provisions concerning the election of state officials also are included. Logically, as is shown by the recent rearrangement of the Massachusetts constitution, the sections providing for the use of the initiative and referendum should also be confined under this head.

(5) The frame of government

The financial clauses of the constitution contain the fundamental limitations upon the financial power of the state government. Here are found the restrictions upon the use of the credit of the state, limitations upon the state debt, and, perhaps most important of all, the provisions concerning taxation.

(6) Financial clauses

(7) Corpora-
tions

Corporations are dealt with in an increasing number of sections. In the older constitutions this is disposed of with comparative brevity, but in the newer constitutions—particularly those of a more radical nature—corporations are subjected to most minute provisions for their regulation. For example, in the constitution of Oklahoma fourteen pages are devoted to the regulation of corporations. In constitutions of this type regulatory commissions are established with power to inspect and supervise the activities of corporations, to prescribe the rates for certain kinds of services, and to supervise the issuance of stock and securities.

(8) Labor

Labor is often the subject of several constitutional provisions. In some states departments of labor are established, the eight-hour day stipulated in all public employments, and permissive directions given to the legislature to pass laws concerning the health and safety of labor, particularly in the mines and railroads.

(9) Miscel-
laneous

State constitutions have always contained a large number of miscellaneous sections. Even the early constitutions contained provisions for the state educational system, but the more modern instruments not only provide for a school system, but in some of the Western states set aside certain revenues for the maintenance of this system. Under this heading are classified the provisions concerning the manufacture and sale of intoxicating liquors, the maintenance of the poor, the safeguarding of public health, the provisions for charitable institutions, and the control of public property.

(10) The
amending
clause

The last important section of a typical state constitution contains the methods of amendment and revision. These are of vital importance. As has been pointed out, some of the Revolutionary constitutions had no such clauses, and in absence of them the legislature either itself amended the constitution or supplied the means by which the constitution was revised or amended through the constitutional convention. If, however, the fundamental principle of popular sovereignty rather than legislative supremacy is to be maintained, it is necessary that the provisions for constitutional amendment and revision should be most carefully expressed.

At the outset a distinction is sometimes made between amendment and revision.¹ The distinction is one both of kind and of degree. A revision is generally applied to the work of a constitutional convention, which either drafts an entirely new constitution or proposes a series of amendments that in effect formulate a new instrument of government. It is entirely possible, however, that a constitutional convention may propose only a few amendments dealing with details, rather than attempt to remake the constitution. Amendment is the term usually applied to the proposal or proposals to change certain provisions and details of the constitution while leaving the general instrument intact.

Constitu-
tional
revision and
amendment

Most states provide for constitutional amendment by legislative process. In New Hampshire amendments may be proposed only through the medium of a constitutional convention. Legislative amendment was allowed in the early state constitutions, provided, in general, that the same amendment was passed by two successive legislatures. Delaware alone continues to adhere to this method and does not require a popular referendum. In all other states the steps in the process are proposal in the legislature, adoption by one or more consecutive legislatures, and acceptance by the people at an election. Sixteen states require the action of two legislatures; in thirty-two the action of one is sufficient. In those states where the sessions of the legislature are held each year there is little objection to the requirement that two legislatures must pass upon an amendment before submitting it to the people, but with the trend toward biennial sessions a serious objection arises. Two or three years may elapse between the proposal of the amendment and the popular referendum. Taking into consideration, in addition, the fact that the character of the constitutions has changed and that they now include great masses of legislation, the requirement of acceptance by two legislatures prevents the people from altering or repealing a clause or provision which emergency has proved

Amend-
ments

¹ J. Q. Dealey, *The Growth of American State Constitutions*, chap. xi. For a more extended treatment see W. F. Dodd, *The Revision and Amendment of State Constitutions*, chap. iv.

undesirable.¹ It should be added, however, that since the initiative and referendum applies in many states to constitutional amendments, this objection is more theoretical than actual.

Majority
required
in the
legislatures

Nineteen states require only a majority vote of the legislature for amendments, seventeen require a two-thirds vote, and seven a three-fifths vote.²

The referen-
dum on the
amendment

In Mississippi and South Carolina—states where the approval of two legislatures is required—the referendum is placed between the action of the first and second legislatures. This gives to that body, rather than to popular choice, the final voice in accepting the amendments. In all other states except Delaware, where the referendum is not used, the approval of the voters is placed after legislative action, thus giving the people the final decision.

Vote
required on
referendum
for consti-
tutional
amend-
ments

The constitutions in thirty-three states require that amendments shall be approved by "a majority of those voting thereon." In three states³ the proposed amendments must be ratified by a majority of the electors. Nine states⁴ have provisions which require a majority of all votes cast at the election at which the amendment is submitted. This is extremely difficult to obtain, and has prevented the adoption of a certain kind of amendment and led to curious evasions on the part of some states.⁵ Such requirements have the doubtful advantage of preserving the provisions of the constitution against alteration by a small section of the people. In experience, however, this is outweighed by the difficulty of obtaining the requisite majority on all amendments. It means, therefore, that constitutions of this sort are for all practical purposes unamendable in details.

Revision

Most of the constitutions provide for revision by a constitutional convention.⁶ Massachusetts was the first state to try

¹ J. Q. Dealey, *The Growth of American State Constitutions*, p. 140.

² *Ibid.* p. 141.

³ Idaho, Indiana, Wyoming.

⁴ Alabama, Arkansas, Illinois, Minnesota, Mississippi, Nebraska, Ohio, Oklahoma, Tennessee.

⁵ See W. F. Dodd, *The Revision and Amendment of State Constitutions*, pp. 185-105.

⁶ The following states make no such provision: Arkansas, Connecticut, Indiana, Louisiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Rhode Island, Texas, and Vermont.

this plan, which was soon adopted by the other states. Even those states whose constitutions did not make such provision have utilized this method. In fact, it is generally accepted that the legislature of a state may, even in the absence of constitutional provisions, submit to the people the question of whether a constitutional convention shall be summoned to revise the constitution. Certain states, however, require the submission of such a question at specific intervals,¹ the underlying theory being that at least once in every generation the people should pass upon the question of revising their fundamental frame of government.

The constitutions of some states make elaborate provisions concerning the composition of the convention; in others this is left to the legislature.² Failing such provisions, the legislature exercises the power of determining the composition of the convention. In some instances its composition and the purpose for which it is summoned are made a part of the act submitted to the people for approval. In others popular approval is asked only upon the question of summoning a convention; this being granted, the legislature has full power to determine its composition. Modern constitutional conventions usually attempt to represent the small localities, such as the representative districts of the state legislature; the larger districts, like the counties, state senatorial, or even congressional districts; and, finally, the state at large. These delegates at large, who are chosen by the majority of the voters of the entire state, are generally recognized as the leaders of the convention.

Two theories have been put forward and acted upon concerning the powers of the convention. According to the first the constitutional convention is a body subordinate to the state legislature, so that the state legislature may, at its discretion,

¹New Hampshire, every seven years; Iowa, every ten; Michigan, every sixteen; Maryland, New York, Ohio, Oklahoma, every twenty. In Iowa, Michigan, New York, Ohio, and Oklahoma the legislature is given discretion to submit the question at other times than the periods stated in the constitution.

²See W. F. Dodd, *The Revision and Amendment of State Constitutions*, and R. S. Hoar, *Constitutional Conventions*.

Composition
of the
convention

Powers of
the consti-
tutional
convention

prescribe its composition and limit its powers. It may determine what matters shall be considered by the convention and how these shall be submitted to the people. This doctrine was asserted by the Pennsylvania supreme court in 1874, but was not followed by the last convention called in that state. By the second theory the constitutional convention, since it represents the sovereignty of the people, is unfettered by any legislative acts. This is the more generally accepted doctrine. Legislatures, however, have not generally violated the proper legislative acts which were necessary for the summoning of the convention, for its organization, or for the submission of its work for approval. Conventions, on the other hand, have rarely attempted to exercise functions which belonged obviously to the legislative department, although they have not hesitated to assume powers properly belonging to them even in defiance of legislative enactment.

Limitations
upon consti-
tutional
conventions

Constitutional conventions are not absolutely sovereign. They are limited explicitly by the provisions of the Federal Constitution, treaties, and statutes, and by the constitution of the state.¹ There are, moreover, certain implied limitations; for example, that the convention should not exercise legislative or judicial power; that in general, though sovereign for its purpose, it should not transgress the fundamental principles of state government.

The consti-
tutional
convention
at work

On the assembling of the convention a chairman or presiding officer is chosen who has many of the powers of the speaker of the legislature. He possesses the obvious parliamentary control over recognition and the preservation of order. In some conventions, as, for example, the Massachusetts convention of 1917, he is given the power to appoint committees. Whether the chairman appoints the committees or not the convention is divided into committees to whom are referred the multitudinous proposals for amendments. These committees make more or less careful investigations and hold hearings, and finally present their reports to the convention. In many

¹In Virginia constitutional conventions in 1830, 1850, 1860, and 1902 did not submit their work to the electorate prescribed by the constitutions under which they were called, but these cases are exceptional.

states these are discussed in committees of the whole, where they are subject to debate and amendment. They are finally reported to the convention for adoption or rejection. In some conventions there is a general committee on revision or rearrangement. Particularly is this necessary when numerous and fundamental provisions are added to an old document. The amendments adopted by the convention are then almost universally referred to the people for approval at some general election. Some states, however, provide that constitutional amendments should be submitted only at special elections. This has the advantage of concentrating the attention of the voters upon the proposed amendments, but it has the disadvantage that such special elections may attract fewer voters than ordinarily come out for the regular party elections.

A third method of constitutional amendment which may be employed is the popular initiative followed by the referendum. The initiative and referendum Thirteen states¹ possess the full initiative and referendum on constitutional questions. In some of these states the initiative petition requires a larger number of signatures than a petition for an ordinary law. In others the proposed amendment has to run the gantlet of the legislature. In some, however, the people may initiate a constitutional amendment by the ordinary lawmaking process and approve it by a popular referendum accepted by a majority of those voting thereon.

The amendment to the Massachusetts constitution adopted in 1918, while not typical of the ordinary procedure, may be The Massachusetts plan taken as an attempt to allow for the expression of popular opinion while safeguarding the permanency of the constitution. By this provision an amendment may be initiated on a petition signed by twenty-five thousand qualified voters. It then must be submitted to a joint session of the house of representatives and senate, where it must receive the approval of at least one fourth of the elected members of two successive legislatures. It is then submitted to the people and becomes a law if approved by three fourths of those voting thereon.

¹ Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, and Oregon.

It is a general fear that the use of the initiative for constitutional amendments would still further break down the distinction between statutory and constitutional law. From an analysis of the amendments adopted, such a contention cannot be maintained.¹ It was feared, moreover, that the people, undeterred by the legislature or a constitutional convention, would attempt radical changes in the form of state government or would write into the constitution too liberal provisions. Experience has shown that this is not the case. The proposed radical revision of the Oregon constitution in 1912-1913 was overwhelmingly defeated. Of the proposed amendments to the constitution of California only the recall of judges might be considered unusual or revolutionary. In fact, no amendment proposed by initiative has been adopted for which a precedent might not be found in amendments proposed by conventions or legislatures. Theoretically, perhaps, considering the ease with which signatures are obtained for petitions and the lack of interest which voters display in marking their ballots, great evils might be anticipated. Experience, however, has not warranted such a gloomy foreboding.

¹ See A. N. Holcombe, *State Government in the United States*, pp. 404-411, 428-444, for an excellent discussion of the use of initiative and referendum for constitutional amendments.

PART II

THE POLITICAL SYSTEM OF THE STATES

CHAPTER III

THE ORGANIZATION OF THE ELECTORATE

Lincoln defined popular sovereignty as a "government of the people, by the people, and for the people." The popular will, however, as expressed by the people has never been expressed by all the people. In every state it is a group of people who are chosen to express the will of the entire state. This group is the electorate. The electorate possesses the right to vote, or the suffrage, by which the popular will is officially and legally manifested. The right to vote, therefore, is not a right possessed by all citizens of a state or a privilege granted to certain citizens of a state; it is a duty or a function which certain citizens of the state are chosen to perform for all the people. Thus, even in the elections the voters are the representatives of the whole body of the people, as in lawmaking the legislators represent the voters.

At all times in the United States the suffrage, or the right to vote, has been restricted. Even the declarations of rights which preceded the first state constitutions, while declaring that elections should be free, were equally insistent that participation in them should be restricted. Thus Pennsylvania and Virginia restricted the franchise to "free men having a sufficient evident common interest with, and attachment to the community."¹ The Massachusetts declaration allowed the inhabitants to establish qualifications by their frame of government. In all the states during the eighteenth century this right was jealously guarded—in most of them by property qualifications, and in all by some test of fitness. The nineteenth century initiated a gradually increasing extension of the suffrage and removal of the restrictions, and this was accelerated by the Civil War amendments to the Federal

¹ Pennsylvania Declaration of Rights, Article VII.

Constitution, which prohibited restrictions on account of race, color, or previous condition of servitude. It reached its logical culmination in the adoption of the Nineteenth Amendment, which prohibits restrictions of suffrage on account of sex.

States may
prescribe
suffrage
qualifica-
tions

Within these limits, however, the states are free to act and to prescribe such qualifications for suffrage as they may see fit. The right to vote is not a right of United States citizenship.¹ Therefore a state may, with impunity, deprive a United States citizen of such a right, provided it is not done on the basis of race, color, or previous condition of servitude.² But in so doing, a state subjects itself to the possibility of having the basis of its representation in Congress reduced in the proportion which the number of citizens so deprived shall bear to the whole number of male citizens in the state.³ By the Nineteenth Amendment a state was forbidden to deny the suffrage on account of sex, and Congress was given power to enforce this.

Present
qualifica-
tions for the
suffrage:
(1) Age

The present qualifications for suffrage may be grouped under six main headings:

All the states adopt the English rule of fixing the age limit at twenty-one years. This is a lower age than is placed in some European countries, where it is felt that a longer political experience should be required of a voter; but in no country, except the new German Commonwealth,⁴ has the age been fixed at a lower figure.

(2) Sex

At first all states limited the suffrage to males. In 1869 Wyoming granted suffrage to women; Colorado followed in 1893 and Idaho and Utah in 1896. Beginning with the second decade of the twentieth century the movement spread more rapidly, and by 1920 included twenty-nine states. Thus far the extension of the franchise to women had come entirely through state action and was following the normal course of allowing the states to determine their own qualifications

¹ *Minor v. Happersett*, 21 Wall. 162.

² Amendment XV.

³ Amendment XIV.

⁴ Suffrage is extended to all citizens, irrespective of sex, at the age of twenty.

for voting. In 1920, however, the Federal Constitution was amended and a new federal restriction placed upon the states. Thus the states lost their right to grant or withhold suffrage on the basis of sex—a right which certain states were most anxious to retain.

Theoretically it has long been felt by many that there was no valid reason why women should not be consulted in determining the popular will. The changed conditions of society and the changed economic status of women made it desirable that they should have a legally recognized opportunity to be formally consulted. The extension of the sphere of government activities and the widening of the conception of the duties and services of the state seemed to make it advisable for the state to consult women on its affairs. The experiences of the World War showed that women were capable, practically as well as theoretically, of performing this function. Consequently, first in Europe and then in the United States, the suffrage was extended to them.

[Reasons for the extension of the suffrage to women]

All states require that the voters should have a residence within the state in which they vote. The most common period is one year; but Maine requires only two months and Idaho, Indiana, Iowa, Michigan, Nebraska, and Oregon, six months. At the other extreme, in Alabama, Louisiana, Mississippi, North Carolina, Rhode Island, South Carolina, and Virginia, two years' residence is necessary. What constitutes residence is determined by state law, and once acquired it may be retained under certain conditions even though the citizen be absent. While the provisions of the absent-voting laws do not alter the residence requirements, they do make it possible for citizens temporarily absent to vote.

(3) Residence

Most of the states demand that the voters shall be bona-fide citizens of the United States. A few states, however, allow aliens to vote if they have filed their intention to become naturalized. Similar provisions which formerly existed in other states were adopted to encourage immigration; but with the exception of the states mentioned they have disappeared, and the right to determine the officers and, indirectly, the policy

(4) Citizenship

¹ See Absent Voting, pp. 99-100.

of the state and of the United States has been properly confined to United States citizens.

(5) Prop-
erty qualifi-
cations

Practically all the early state constitutions imposed a property qualification—in some cases on the voters only, in other cases on the voters and also on the officers chosen by the voters. These property qualifications have now almost everywhere disappeared. Pennsylvania requires of all voters twenty-two years of age the payment of a state and county tax. In some of the Southern states the payment of a tax is one of the alternate qualifications with the literacy test. The argument in favor of a property qualification is generally based upon the theory that property is the evidence of permanency or interest in the community, or a measure of ability. It may be all of these, or it may be an evidence of none. Property unjustly or corruptly acquired is hardly an evidence of fitness to take part in the expression of the common will.

(6) Educa-
tion

Fourteen states demand some educational attainment. In thirteen states¹ one must be able to read and write; five states² require simply the ability to read. In all these states, however, certain classes are exempted from complying with this qualification. Persons physically unable to read or write are exempted everywhere except in Connecticut, Mississippi, and South Carolina. In the Northern states the requirement does not apply to voters of a certain age or to those who were voters at the time of the adoption of the constitution. In many of the Southern states the educational prerequisite is made an alternate for a property requirement, and in some Southern states the sons and grandsons of voters at a certain period are exempt from this education qualification.³

¹ Alabama, Arizona, California, Delaware, Georgia, Louisiana, Maine, Massachusetts, New Hampshire, North Carolina, Oklahoma, South Carolina, Virginia.

² Connecticut, Maryland, Mississippi, Washington, Wyoming.

³State Manual of Constitutional Restrictions (see Index Digest of State Constitutions, prepared for the New York Constitutional Convention, 1915). For a brief statement of qualifications see tables in World Almanac or American Year Book. For fuller treatment of the educational qualification see J. B. Phillips, "Educational Qualifications of Voters," in *University of Colorado Studies*, Vol. III, p. 55.

The exemption at a certain period of the grandsons of voters from the present requirements is popularly known as the "grandfather clause." That the educational qualification need not apply to certain classes has always been admitted. The Southern states, however, in their anxiety to insure the dominance of the white voters, framed these exemptions so that illiterate whites would generally be exempt while illiterate blacks would be disfranchised.¹ This was an attempt to circumvent the Fifteenth Amendment, which forbade any state to deprive the citizens of the United States of the right to vote on account of race, color, or previous condition of servitude. In 1915 the Supreme Court met the issue squarely. In 1901 Oklahoma, which was admitted as a state in 1907, adopted a constitutional amendment requiring an educational qualification; but "no person who was, on January 1, 1866, or any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such Constitution. . . ." This, the Supreme Court held, contravened the Fifteenth Amendment, saying:

The
grandfather
clause

It is true it contains no express words of an exclusion from the standard it establishes of any person on account of race, color, or previous condition of servitude, prohibited by the Fifteenth Amendment, but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the Fifteenth Amendment and makes that period the controlling and dominant test of the right of suffrage.²

The purpose of the grandfather clause was confessedly to disfranchise the negroes while allowing the whites to vote. It was an attempt to insure that the electorate should contain an overwhelming majority of white voters. Sometimes the assertion is made that a simple literacy test, coupled with the requirements of continuous residence and payment of a poll

The purpose
of the
grandfather
clause

¹For a detailed examination of these restrictions, with a discussion of their constitutional bearings, see J. C. Rose, "Negro Suffrage," in *American Political Science Review*, Vol. I, pp. 17-44.

²*Gunn v. United States*, 238 U.S. 347, 364-365.

tax, would probably accomplish the same result. But in Lowndes County, Alabama, out of a white male population over twenty-one, of 1139 only 81 were illiterate. The same county had a colored male population of over 6000, of whom more than 4000 were illiterate, which would still leave a colored majority greater than the combined literate and illiterate white voters. How far the qualifications for residence and payment of poll tax would alter this is uncertain. This same county, relying on this and other qualifications, registered only 39 colored voters in 1902.¹ It may be granted that certain classes of the negroes are not fitted to exercise the suffrage. But it is submitted that qualifications could be devised which, applied equally to both races, would disfranchise the unfit in both races and yet would probably leave a safe majority for the white race.²

Disqualifi-
cations

All states except Iowa disqualify certain classes. The obviously unfit, such as the insane, paupers, and persons under guardianship, are generally disqualified. Seventeen states disqualify for bribery; several states for election crimes.³ Some of the Southern states disqualify for crimes to which the colored race is peculiarly prone, thereby still further insuring white supremacy. It is obvious that persons in these classes are hardly fit to be charged with the expression of the public will of the state, and little criticism can be urged even against those states which single out the delinquencies of a particular race.

The effect
of suffrage
qualifica-
tions

The intent of the Fourteenth Amendment was to assure manhood suffrage. Such a standard prevails in New York State, where, as Professor Holcombe shows, before the Nineteenth Amendment, as a rule 76 per cent of the adult male citizens voted. In Massachusetts, where there is an educational qualification, 65 per cent voted; in North Carolina and South Carolina, 17 and 15 per cent respectively; in Oregon, 59 per cent;

¹See W. E. B. Dubois, "The Social Effects of Emancipation," in the *Survey*, February 1, 1913, pp. 570-573. For these and other tables see A. N. Holcombe, *State Government in the United States*, p. 147.

²For further discussion of this see J. C. Rose, "Negro Suffrage," in *American Political Science Review*, Vol. I, pp. 17-44.

³New York and Wisconsin disqualify persons who bet on elections.

and in California and Washington, deducting the probable percentage of women voters, about 39 per cent.¹

All states have some requirements for the registering of voters, and as registration in itself may debar certain classes, it perhaps should be included among the qualifications for voting. In New York State, with free manhood suffrage, 88 per cent of the male population were registered; in Massachusetts, which has an educational qualification, 80 per cent; in Florida, where there is a tax-paying qualification for the purpose of disqualifying the negroes, 42 per cent; in Louisiana only 43 per cent. The question arises whether a literary qualification is effective in producing a proper electorate. In Massachusetts only 4 per cent of the adult male qualification were disfranchised because of such a test, while 13 per cent were debarred by failure to register.² It would thus seem that registration, particularly if required annually, as in New York, were a better test for interest and readiness to take part in the affairs of the state than an educational test.

Unless the election is for a state officer, chosen by the entire electorate of the state, the voters are combined in districts. Much more attention has been given to the qualifications for suffrage and the extension of the franchise than to the effect of the grouping of the voters in constituencies. If, however, these voters are combined into unfair or artificial constituencies the popular will may be defeated. The most obvious example of this is in the composition of certain districts for the election of congressmen. Some states, by skillful "gerrymandering," have been able to insure a majority for a party which did not express the will or desire of the people who would naturally be associated together.³ Ideally, an election district should be compact, equal in size to other election districts, and should have some self-consciousness. As a matter of fact, election districts vary from an entire state to a ward of a city. In general, every voter acts with the citizens of

¹A. N. Holcombe, *State Government in the United States*, pp. 144-145.

²*Ibid.* p. 149.

³See P. S. Reinsch, *American Legislatures and Legislative Methods*, p. 201; also J. R. Commons, *Proportional Representation*, chap. iii, for maps and tables.

the entire state in the election of governor and state officers. He also belongs in the congressional district, the state senatorial district, the county, the state representative district. Thus, he is associated with different groups of voters—varying from the small number in his ward to the entire voting population of his state—in order to choose representatives, judges, and executive officers and for purposes as diverse as school administration, the decision of constitutional questions by the courts, the management of the county jail, and the national affairs of the federal government.¹ It is impossible that electoral districts made simply upon a geographical basis or upon the basis of population could adequately perform these tasks. Here it is that the party system intervenes and furnishes a guide and directions for the varied actions which the voters are called upon to perform in their different capacities.

Definition
of a political
party

A political party may be defined as a durable organization of voters, holding similar principles and agreeing upon a common policy, which attempts to control the state by means of the election of their candidates. A political party exists primarily for the purpose of carrying elections. It thus differs from groups organized to propagate definite ideas. A political party is supposed to have certain common principles as to what the state should be and do, but too often these principles are vaguely and generally expressed. A political party more often has a definite policy, which it sets out to accomplish. To achieve this it may attract persons who are not in full agreement with the principles of the party. A political party is a durable organization; that is, it may vary in personnel and in character, but so long as the party exists the organization continues. Finally, a political party attempts to control the state and to administer the government, not in accord with the desires and wishes of all the citizens of the state but with the desires and wishes of the party. Government of this type is party government.

Legal defini-
tion of
parties

Formerly political parties were unrecognized by law. They were voluntary organizations of voters subject to no special

¹A. N. Holcombe, *State Government in the United States*, pp. 150-160, describes the numerous electoral districts to which the president of Harvard University belongs.

regulations of the state. This does not mean that they were not subject to the laws which applied to all citizens, but that the state took no cognizance of them as organizations. When, however, the state began to extend its control over elections to the extent of printing the ballots and determining the method by which the names of candidates were placed upon the ballot, it became necessary to make some legal definition for parties. Various states have done this in different ways. Most states define a party as a group which has cast a certain percentage of the vote at a previous election. Such a group being a legal party, it is relieved from some formalities and may place the names of its candidates upon the primary ballot without filing special petitions.

The functions of a party are threefold: first, it must select its candidates for office (that is, make nominations); second, it must make a declaration of principles (that is, state its platform); third, it must attempt to elect its candidates (that is, conduct the campaign). To accomplish these ends a political party must have a durable organization, continuing from campaign to campaign. Formerly neither the organization of the party nor the method of nomination was regulated by the state. Elections have always been conducted by the state, but few restrictions were formerly placed upon the method by which the campaign was carried on.

Functions
of a party

States differ in their types of party organization. In fact, in the same state, different parties may vary in the details of organization. Generally, however, in all parties and in all states the organization has three common factors. Two of these, the party committees and the party officers, are continuous; the third, the party convention, is temporary.

The organi-
zation of the
party

In every state each political party has a state central committee. This committee is variously chosen. Formerly in all states, and still in some, the state committee is chosen by the party convention. With the introduction of the direct primary, later to be discussed, party committees are chosen by the voters directly. Some states have combined these two methods and allow the convention to designate certain members while the electorate chooses others. In other states the

Party
committees

committee may be chosen by the voters, but is allowed, itself, to coöpt additional members. Elsewhere the committee may be designated by the candidates nominated at the convention or the primaries. The general tendency of recent legislation, however, is to vest the choice of the party committee directly in the electorate voting at the primaries. By so doing it was hoped that the organization of the party would be more subject to the wishes of the members and be less likely to fall under the domination or control of leaders who are less responsive to popular sentiment. It is difficult to determine how far these aspirations have been realized. Largely because of the indifference of the party members themselves, the leaders apparently have little difficulty in naming the committee. There is one obvious objection to this method. A committee chosen at the primary may be out of sympathy with the candidates nominated at the same primary. There is less likelihood of this happening when the committee and the candidates are chosen at the same convention, and it becomes practically impossible when the candidates are allowed to choose their own committees.

Composition
of the state
committee

State committees are composed of delegates selected from or by local districts. There is no uniformity of practice. Thus, in New York and Missouri the congressional district is taken as a unit; in Pennsylvania, the state senatorial district; while in some states the county is the accepted unit. In all, however, the state committee represents all sections of the state, and in many states it is so large and cumbersome that its functions are generally performed by a smaller body known as the executive committee.

The func-
tions of
the state
committee:
(1.) Between
campaigns

The activities of the state committee are sharply divided. During periods between elections the state committee seldom meets as a body, although its individual members are by no means idle. Each one, in his own district, is supposed to direct the spreading of propaganda to settle disputes and to overcome local jealousies. He is expected to know what the party members are thinking and to lead and direct the formation of public sentiment favorable to the party. An ideal state committeeman is a true leader within his district. He

does not have to depend solely upon his native ability; he is often the channel through which the state administration distributes favors or offices, and thus he can reward the faithful, strengthen the faith of the wavering, and even win over the hostile voter. During this quiescent period the committeeman frequently attaches to himself voters who may be of use in the coming campaign.

For the committeeman the election campaign begins even before the nomination of the candidates. The state committee, either as a whole or through the medium of its chairman or its executive committee, very frequently is favorable to the choice of certain candidates. In those states where the candidates are nominated by the convention, the committee as a whole, or the individual committeemen, have been known to pick men in agreement with them as delegates to the convention. In some states the committee is so powerful that it practically names the candidates or chooses delegates completely under its control. Such delegates are sometimes called "hand-picked."

In the process of nomination the committee is responsible for the call for the primaries or conventions and for the filing with the state officers of the proper petitions for primary ballots. Under the old convention system the committee was all-powerful in summoning the convention and determining the temporary roll, and, as has been pointed out, through the activities of its members it frequently dominated the convention.

During the campaign the committee works with feverish activity. It collects the funds necessary for the campaign and, in so doing, must scrupulously examine the source of such contributions in order that it may keep within the law. The committee serves as a general strategy board, plans political meetings, dispatches speakers, formulates the policies for the conduct of the campaign, and arouses enthusiasm.

The most important officer of the state committee is its chairman. In some states he is chosen by the candidate for governor; in others, by the committee itself. Presumably he is always an expert, practical politician, and on him devolves

(2) Preparation for nomination

Activities of the state committee:

(1) In the process of nomination

(2) During the campaign

The chairman and the treasurer of the state committee

the duty of keeping harmony among and injecting energy into the other members of the committee. Frequently he is not only the most influential man on the committee but more influential than all the rest put together. He is not merely its executive agent; he is generally the directing force, with the committee members as his aids. The treasurer of the committee, in modern times, is generally a man of sterling probity and unexceptionable reputation. He has charge of the campaign fund. This is gathered generally by collectors throughout the state, but the treasurer is held legally responsible for the acceptance of contributions and the distribution of the money.¹

Local
committees

Theoretically there is a political committee for every district electing an officer. Thus, there are ward, city, and town committees, county committees, state representative committees, state senatorial committees, and congressional committees. The most important of these, however, are the county committees outside of New England and the city or town committees in New England. The county committees rank next to the state committees in importance; in New England, where the town or city rather than the county is the political unit, county committees are of little importance and their activities are undertaken by the city or town organizations.

County
committees

County or city committees have two functions. Primarily they may be interested in the nomination and election of the local officials—county commissioners, mayors, and so forth. These functions will be discussed later. Yet from the point of view of the state organization they are strictly subordinate to the state committee. They and their officers, receiving directions and contributions from the state party committee, conduct the campaign for the state officials under the direction of the higher committee. Since, however, in local affairs the local officers and organizations are apt to be influential with the voters, and since in some states the "county ring" dominates the political life, these local committees cannot be ignored. Generally there is little possibility for friction, because the leader in the county may be on the state committee or a close

¹ See pages 83, 87.

friend and supporter of the state committeeman, or even, in some cases, the mentor of the state committeeman.

The temporary element in the organization of a political party is the party convention. This is summoned at stated intervals in the political cycle—annually where the officers are subject to yearly elections, biennially or even quadrennially where the officers are elected less frequently. Before the institution of the direct primary the party convention was the supreme governing authority in the party. Until the state attempted to subject political parties to legal control, the convention alone made the rules and regulations for the choice of party officers besides nominating candidates and framing the platform. Just as there may be party committees for each constituency, so, in former times and still in some states, conventions may be held for each district nominating or choosing officers.

The most important convention, however, is the state convention. This is composed of delegates chosen in different ways from the various districts. In some states the county is the unit. In New England the town or city or even the ward may be the unit. The delegates from districts of greater area are more frequently selected by special conventions held for this purpose.

In the organization of the state conventions the state committee was formerly all-powerful. It issued the call for the convention, but, in so doing, it did more than to fix the date. It determined the method by which the delegates should be chosen—whether by primaries or subordinate conventions. It apportioned the delegates to districts; this might be according to population or according to party strength, as decided by the rules of the party adopted at the previous convention.

Where the convention system is unaffected by the direct primary there is a routine procedure. When the delegates to the convention are assembled the committee organizes the convention. Each delegate presents his credentials; that is, a certificate of the fact that he was duly elected at the primary or subordinate convention to represent the party members of his district. Frequently there are "contests"; that is, two

Party
conventions

The state
convention:

(1) Compo-
sition

(2) Organi-
zation

(3) The call

(4) The tem-
porary roll

delegates might appear from the same district, holding credentials from rival caucuses or subordinate conventions. It is the duty of the committee to settle these contests after hearing the claims on both sides and to seat the delegates who in its judgment have the best claim. The result of these decisions is embodied in the "temporary roll" of the convention—a list of the delegates who are allowed to take part in the organization of the convention. Rather often committees have decided contests not upon the basis of justice but in order to obtain delegates subservient to their control.

(5) The temporary chairman

The chairman of the state committee calls the delegates to order. The proceedings open with prayer and generally a speech by the chairman of the committee, and then follows the choice of a temporary chairman, who, in his turn, makes a speech (frequently known as the keynote speech), which is designed to rouse enthusiasm and possibly to direct the convention along the lines desired by the state committee.

(6) Committee on credentials

The temporary chairman next appoints a committee on credentials, who, after reviewing the work of the state committee in seating contesting delegates, reports to the convention. Since the convention is composed only of those delegates seated by the state committee, and the committee on credentials is drawn from those delegates, the report of the committee on credentials generally supports the action of the state committee and is usually ratified by the convention without question. In other words, the temporary organization votes itself the permanent organization of the convention. The convention now being permanently organized, selects a permanent chairman, who accepts with a speech. Frequently, however, the convention chooses the temporary chairman as the permanent chairman, and the delegates are spared further discussion.

(7) Permanent organization

(8) The work of the convention

(9) Committee on resolutions

(10) Platform

A committee upon resolutions is formed whose duty it is to prepare a series of statements embodying the principles of the party and setting forth a declaration of its policy. These resolves constitute the platform. The chairman of the committee on resolutions has generally been designated by the state committee long before the convention was summoned,

and his work has been carefully supervised by the leaders of the party. Hence the actual work of the committee on resolutions in framing the platform is largely illusive. Occasionally, however, amendments are offered from the floor, although these are rarely adopted by the convention.

Before the day of the direct primary, and in those states where it has not been adopted, the next and, in many ways, the most important duty of the convention was to make nominations. These were made by delegates, who, as has been shown, were often "hand-picked" by the state committee and therefore susceptible to its direction. Although sometimes waves of enthusiasm would sweep the convention, or the appeal of a popular leader outweigh the desires of the state committee, in general the delegates would, to use the popular phrase, "stand without hitching." As a rule the influence of the state committee was all-powerful and few candidates whom they actively opposed were nominated. (11) Nominations

The convention in former times had one other duty—to choose the state committee and its officers. As has been pointed out, this was not always done by the convention, and in those states which have adopted the direct primary system they are now selected by the people directly. (12) Choice of party committee and officers

Theoretically the convention system is the ideal way of conducting party affairs. It is an example of representative organization; it provides opportunity for the delegates from all parts of the state to meet in conference and, after hearing arguments, to make their decisions upon the policy of the party and to determine its candidates; it gives a proper legitimate scope for genuine leadership. State committeemen theoretically are local leaders. The convention system enables these leaders to exert their influence in representing the popular opinion of their localities and to transmit into their localities the opinions of others. It gives the leaders an opportunity to appeal to delegates from all over the state and for the delegates, before casting their votes, to hear the opinions of delegates from other communities and to listen to other leaders. If, as the theory requires, the delegates were the most representative party men of their districts, who, after hearing Discussion of the convention system

arguments, reached a calm decision based upon evidence and a genuine desire to further the good of the party, no better system could be devised for the conduct of party affairs. An examination of the actual working of the convention system will show how far the practice departed from this theory.

Faults of
the conven-
tion system:

(1) Char-
acter of the
delegates

Seldom are the majority of the delegates the best or even the most representative members of the party. It is true that probably no party convention was ever held that did not contain some of the wisest and some of the most representative men, but the conventions generally attract at best mediocre men. If the state committeeman is successful in naming the delegates, he will see to it that, while there are several names of outstanding merit, the mass will be amenable to his directions. This does not necessarily mean that the delegates are of the type mentioned below,¹ but they are not men of force and great independence of judgment.

(2) Irregular
proceedings

Occasionally the proceedings of the convention have been characterized by irregularity if not downright fraud. The power of the state committee in passing upon the credentials of the members has already been noticed. This power has been too often abused in order to unseat delegates of whom the convention was not sure and to seat those delegates who would be compliant. In some instances a faction has gained possession of the convention hall, locked the doors, and prevented the other delegates from sharing in the proceedings

¹Of the delegates, those who had been on trial for murder numbered 17; sentenced to the penitentiary for murder or manslaughter and served sentence, 7; served terms in the penitentiary for burglary, 36; served terms in the penitentiary for picking pockets, 2; served terms in the penitentiary for arson, 1; ex-Bridewell and jailbirds, identified by detectives, 84; keepers of gambling-houses, 7; keepers of houses of ill fame, 2; convicted of mayhem, 3; ex-prize-fighters, 11; pool-room proprietors, 2; saloon-keepers, 265; lawyers, 14; physicians, 3; grain dealers, 2; political employees, 148; hatter, 1; stationer, 1; contractors, 4; grocer, 1; sign-painter, 1; plumbers, 4; butcher, 1; druggist, 1; furniture supplies, 1; commission merchants, 2; ex-policemen, 15; dentist, 1; speculators, 2; justices of the peace, 3; ex-constable, 1; farmers, 6; undertakers, 3; no occupation, 71; total delegates, 723.—*Review of Reviews*, Vol. XVI, p. 322, quoted by P. O. Ray, *An Introduction to Political Parties and Practical Politics* (rev. ed.), p. 128.

of the convention. Sometimes the chairman "gavels" through a measure; that is, he announces that the "ayes" have carried the motion, when, as a matter of fact, the motion is lost. At best the conventions are not orderly. Even where a semblance of order is maintained, the cheering and enthusiasm, which is by no means always spontaneous, makes calm consideration almost impossible.

The convention system, as do all representative systems, involves a delegation of power. The voter at the caucus or primary chooses delegates who may or may not perfectly satisfy his will. When the delegates to a convention are selected by a subordinate convention another step intervenes between the voter and the final expression of the party will. At the time of the caucus at which the delegates are chosen the issues and candidates are by no means clear to the average voter. He has to express his opinion upon delegates of whom he may know little, over whom he has little influence, and who are put before him by the leaders. Theoretically a group of voters may select any delegates they wish for the convention; practically, however, because of their indifference, the organization presents to them the delegates of whom it feels sure.

The criticisms just mentioned make it evident that the convention system is very susceptible to control by the organization. The organization may utilize its great powers to secure the nomination of upright candidates;¹ it may force a compromise between divergent factions. In too many instances, however, the organization manipulates the convention so that it fails to express the real desires of the party members and merely registers the decisions of the leaders, who can safely trust the voters, after their resentment has died down, to ratify their choice because of loyalty. In not a few instances the organization has manipulated the convention for personal and corrupt ends. In so doing it sinks to the level of a machine, and the leaders become "bosses."

¹A former chairman of a state executive committee, in praising the convention system as operated by his party, asserted that the convention system had never nominated a "crook."

(3) Remote-
ness from
the voter

(4) Organi-
zation or
machine
control

The machine

A machine differs from an organization in that it operates and directs the party, not for the interests of the party, but for private or personal ends. In a machine the leader is the boss. The boss need not be personally corrupt nor need the machine or the boss engage in corrupt or illegal practices. As has been shown, there is ample scope within the letter of the law for the machine to misrepresent the rank and file of the party and to manipulate the organization so that candidates are nominated and elected who may be subject to influences other than those of the party.

Organization of the machine. Tammany Hall:

The organization of the machine may perhaps best be studied from a description of the most efficient political organization in the United States—Tammany Hall.¹ Tammany Hall, which is the name of the headquarters of the local organization of the Democratic party for New York County, originated in 1789 as a benevolent social society. It soon began to take part in local politics and sided with the Anti-Federalists. Although it still bears the title "Democratic Republican," it has followed the fortunes of the Democratic party—the lineal descendant of the Anti-Federalists.

(1) The county committee

The county committee for New York County is composed of one delegate for every thirteen Democratic voters. Theoretically this should give the most perfectly democratic organization in the world; practically it produces a huge committee of more than eight thousand, so unwieldy that committee action is impossible. Its very size appeals to the leaders of the machine. Eight thousand members of the party are honored by being chosen committeemen and therefore become active workers. Each committeeman, moreover, is assessed ten dollars, which gives the party treasury an initial sum of more than eighty thousand dollars.

(2) The executive committee

The real work of the committee is performed by the executive committee. This is a small body consisting of one, two,

¹The most recent account of the organization of Tammany Hall is given by Gustavus Myers, *History of Tammany Hall* (2d ed.), New York, 1917. See also P. O. Ray, *An Introduction to Political Parties and Practical Politics* (rev. ed.), pp. 435-447, for an account furnished by L. P. Kilroe, chairman of the general committee of the nineteenth assembly district.

or three leaders from each of the twenty-three assembly districts into which New York County is divided. In theory the members of the executive committee are chosen by the committee members from their assembly district. However, in practice a would-be executive committeeman prepares a "slate"; that is, a list of names in the proportion of one to every thirteen Democratic voters in his district with his own name at the head.¹ At the primary election, if this slate is successful, not only are the names on the ticket elected to county committees but the originator of the slate becomes the "leader" of the district and a member of the executive committee. There is a rule of the county organization, however, that the newly elected members of the executive committee must be accepted by the retiring committee. This tends to perpetuate the influence of the executive committee and to make revolt against its decisions unlikely.

The members of the executive committee and the men intimately associated with it practically control the government of New York City and are influential in state and even in national politics. Primarily they are engaged in the election of candidates and, as such, disburse the party funds. But since they control the candidates who are generally elected, they frequently determine the policy and action of the city and county officials. The leaders and officials of Tammany Hall are either members of the executive committee or have great influence over its decisions. Although the executive committee has certain officers, as do all party committees, the real power has been frequently exercised by some unofficial person who is able to control and dictate its action. He is the boss.²

(3) Influence
of the
executive
committee

¹For illustration of a ticket see C. A. Beard, "The Ballot's Burden," in *Political Science Quarterly*, Vol. XXIV, p. 589.

²The influence of Tammany Hall in New York City politics has somewhat declined. The extraordinary growth of population in the outlying boroughs has tended to reduce the influence of Manhattan. With the changed character of immigration the Irish no longer have their dominating influence, and the Socialist party more strongly appeals to the East Side population. The abolition of the saloon may also be expected to decrease Tammany's influence still further. See C. A. Beard, *American Government and Politics* (3d ed.), p. 663.

(4) District
leaders

The members of the executive committee occupy a dual position. Their duties on that committee have already been described, but they have other duties even more important. These are connected with their own districts. Each district leader must be the most influential member of his party within his district. To be such he must be continually active. He must attach to himself personally the voters of his district. For this he must confer countless favors and be ever ready to help his constituents. He is the most charitable of persons—generous with his own means and prodigal with the resources he may control. Not only is he given to charity, but he is the center of the social life of his district and generally the patron of the political club where the members of the party seek relaxation. He not only knows the mind of his district but must be able to anticipate it, to guide it, and, in rare emergencies, to control it. Too often his means come from sources not altogether legitimate.¹

(5) Election
captains

The assembly districts are divided into election districts, or precincts. In each of these there is a minor leader known as the election captain. His duties and functions are analogous to those of the district leader, but he operates within a smaller sphere, since his resources are not so great and he is forced to subordinate himself to the will of the district leader.

(6) The
workers

"The workers" is the name given to the active members of the party. They are controlled by the election captains or district leaders. They often receive actual cash payment for their services in "getting out the vote" or in aiding registration. Every party must depend upon party workers, paid or unpaid. In a machine, however, almost the only bond between the worker and the party is the money paid. The workers frequent the political clubs of the district, where they gather inspiration and receive their orders; they permeate the life of the district, spreading the opinions of the leaders and captains and bringing to their superiors' attention likely recruits or possible symptoms of discontent.

¹ For a description of an imaginary day of the typical assembly district leader at work see C. A. Beard, *American Government and Politics*, p. 579.

As has been described, the political system of the states is complex. In order that the electorate may ultimately express its will, many things have to be done and many requirements met. The ordinary man voter is busy about his own affairs—too busy to remember the date when the nomination papers for the primary must be filed, too busy to circulate the necessary petitions, too busy to make sure that there are enough names on the ticket for the many offices to be filled. The party organization performs this for him. The active members in the party organization are experts in the complicated provisions of the election laws. They know what must be done, how it must be done, and when it must be done. The average voter does not.

Reasons for the existence of the machine:
(1) Complexity of the political system

Added to the complications of the process of election is the fact that elections take place almost annually. Not only must arrangements be made for this annual affair, but in certain states the work of the active politician must begin for the next election almost as soon as the officer chosen at the preceding election has taken his seat. This requires almost constant activity on the part of someone. By common consent it has been delegated to the organization of the party.

(2) Frequency of elections

Not only are elections frequent, but at each the voters must express their opinions upon a multitude of candidates. In some state elections there may be twenty or thirty officers chosen at a single voting. The mass of the electorate is vitally interested only in the higher officers or the members of the state legislature. Little attention is paid to the selection from the candidates for the other offices. Yet the party must have candidates for these offices. The average voter delegates their selection to the organization, rather than to perform the burdensome task of securing candidates and seeing that the necessary requirements are fulfilled for placing their names upon the ticket.

(3) Multitude of candidates

The officers of the successful party have considerable patronage at their disposal. Before the days of civil-service reform and competitive examinations this was unblushingly put at the disposal of the leaders and party workers. Civil-service reform has somewhat checked this practice. Nevertheless

(4) Patronage

the successful party still has at its disposal many appointments to offices exempt from the rules. Not only has the winning party patronage, but its officers frequently have it in their power, through the award of contracts, the grant of franchises, and the control of the state funds, to reward their supporters. Also, in their discretionary administration of the law they may hamper even the legitimate activities of certain corporations. Thus it may happen that certain interests with no desire to profit by illegal acts will contribute to the support of a machine in order to insure the election of friendly officials. Other interests may be frankly corrupt and contribute to the support of a machine in order that they may benefit by the illegal acts of the officials controlled by the machine or gain immunity for their own illegality.

Why party
organiza-
tions
sometimes
become
machines

Party organizations are necessary, but they are not necessarily bad. Even at the worst a most tyrannical party organization accomplishes many functions which the ordinary voter would be unable to perform. The very burden on the electorate tempts the organization to become a machine. By its control of the officers of the state it controls the policy and dictates the action of the government for its own end. This temptation is recognized by persons and interests who desire special favor from the government. Thus it happens that a necessary and a good instrument has in many states been prostituted to selfish and corrupt purposes.

CHAPTER IV

THE ELECTORATE IN ACTION

THE PRIMARIES

In order to ascertain whether the voters have met the qualifications for suffrage, and to be sure that none but those qualified actually vote, some system of registration is necessary. In all the states there are boards of registration in each voting district who enroll the would-be voters on their lists and assure themselves that the requirements have been fulfilled. This is done but once—in some states, upon the voter's making his original application for enrollment or upon his reaching the legal age. Thereafter the registrars and their assistants are supposed to make a canvass and to remove from the voting lists the names of those who have left the district or who have died. In small communities this may be sufficient, inasmuch as the members of the community are well-acquainted with one another, but in larger communities the door is open for fraud. Names once on the list are used by persons who cannot meet the proper qualifications, and not infrequently the voting list is scandalously padded.

Regis-
tration

To prevent these evils certain states have adopted for the larger communities a system of personal, annual registration. The Pennsylvania laws of 1906 and 1911 may be taken as examples of a very stringent kind. According to these acts the voter must give to the registration officers the following information:

Personal
annual
registration

Name in full, occupation, street and number of residence, whether he is a lodger, lessee, or owner; if a lodger or lessee of only a portion of the house, the location or number of the room or floor; the length of residence in the district and State; place of birth and production of naturalization papers, if an alien; evidence of

the payment of taxes; personal description, color, height, age, and weight; and the voter is required to sign his name in the registration books, if able to write.¹

New York, in 1908, adopted a similar law for cities of over a million population and required the voter to answer the same questions on election day that he had answered at registration should his right to vote be challenged. In the Southern states which have attempted to disfranchise the negroes the registration officers are given so great a discretionary power that they may enfranchise whites and disfranchise blacks. Particularly is this true when applied to illiterate voters, who may satisfy the qualifications by giving a reasonable interpretation of a section of the constitution when read to them. In some cities the police distribute and collect registration blanks for each qualified voter. They are then turned over to a board of registrars for their guidance in preparing the list.

The work of
the organi-
zation in
registration

The organization, or the machine, is active at registration. It is the desire of each party to have all its potential members registered and to prevent its opponent from registering fraudulently. It might be thought that the voters themselves would be interested enough to perform this duty unaided, but experience has shown that this is not the case. Where annual registration is required, voters must be reminded of the necessity, and certain ones transported to the place of registration. In large cities the major parties sometimes employ experts to guard against fraudulent registration. For example, in 1910, the Republican committee of New York County spent \$27,000 for this purpose.² A proper political organization will not attempt to have names put on the list fraudulently, but a machine is likely to do so. It gives the machine just so many more instruments to utilize in the primaries and elections in order to make sure that its purpose will be accomplished.

The primary

In theory registration is a nonpartisan affair, and the first formal act of the organized party is taken in the primaries.

¹See P. O. Ray, *An Introduction to Political Parties and Practical Politics* (rev. ed.), p. 302.

²Herbert Parsons, "Why a Political Party Needs Money," *Outlook*, Vol. XCVI, p. 351.

A primary may be defined as a meeting of the members of the party to perform certain functions. It is not an assembly of delegates like the convention, but, like the old New England town meeting, is a primary assembly of the voters for certain purposes.

At the primaries three functions are generally performed:

(1) The party members may choose some of the officials of the party. In the old days the party committees for the smaller political units were chosen in the primaries, while even now in some states the members of the state committees and all subordinate committees are so chosen. (2) Primaries always nominate certain candidates. Formerly these were for the less important offices for which no nominating conventions were deemed necessary. Where the direct primary is established it nominates for all offices. (3) At the primaries are chosen the delegates for the nominating conventions. This was its chief function formerly, but with the spread of the movement for the direct primary and the decline of the convention system it is less important.¹

Functions
of the
primary:

- (1) Chooses party officials
- (2) Nominates candidates
- (3) Elects delegates for nominating conventions

The primaries are summoned upon the call of the committee of the party. Before state regulation extended to party affairs the committee had almost complete power. At present, however, most states prescribe the days on which the primaries shall be held, set the hours between which the primary may take place, and still further regulate the procedure.

Organiza-
tion of
primaries

In former times the committee was sometimes known to summon a "snap" primary; that is, one without due notice. Committees have been known to organize and hurry through the proceedings of a primary without giving the party members an opportunity to vote. In some cases more violent methods were practiced, and rival factions would take possession of the primary and by force prevent their opponents from voting. To prevent these practices most states subject the primary to legal regulation.

Irregulari-
ties in
former
primary
system

¹As will be explained, the direct primary actually nominates candidates, while the old-fashioned primary usually elects delegates to a convention to nominate candidates. Where both the direct primary and the conventions are used candidates may be nominated in both ways.

Procedure in
primaries

At the opening of a primary a chairman and certain officers are elected if these have not been previously designated by the committee. Formerly, in New England, the primary had some of the elements of the old town meeting, and debate was possible; but at present practically all that is done is to cast and count votes. The officers of the primary supervise the checking of the names of the voters and the counting of the ballots. At the close of the primary the officers certify the results to the proper state authorities, and the candidates duly nominated appear on the ticket at the election, or the party officials and delegates chosen at the primary receive their credentials.

Party tests:

Since a primary is a meeting of the members of a party, it is necessary to devise some test to determine who shall vote. Various practices have prevailed in the different states at various times. But the most common may be grouped as follows:

(1) Regis-
tration

The method of registration presents two types: In New York, when the voter registers for election he fills out a blank stating with which party he intends to coöperate. In Massachusetts registration is accomplished by the voter's asking for the ballot of a particular party, thereby automatically enrolling himself in that party. In either type of registration the voter may not attend the primary of another party nor change his enrollment except by making a written declaration of change at a specified time—thirty, sixty, or ninety days before the date of the primary. The second method of deter-

(2) Oath

mining party allegiance is to administer an oath to the applicant. Ordinarily the members of the party are known to the primary officials and in most cases are allowed to vote without question. When, however, they suspect that the applicant is not a member of the party, some states allow them to decline to receive his vote unless he takes an oath to the effect that he has not attended the primary of another party and that he expects to support the ticket nominated at this primary.

(3) Party
rules

In Rhode Island and some of the Southern states admission to the primary is entirely in the hands of the party organization. The state allows the party to make such rules as it thinks proper.

In small communities, where the voters are known to one another, the primary system has many merits. It enables the voters to come together and, after discussion, to make their selections. But this ideal system was seldom realized. The more substantial or intelligent citizens were apathetic and disliked to mingle with the mass of voters. Attendance at the primaries was extremely small, varying from 1 to 10 per cent of the voters. It must be confessed, moreover, that at times the primaries were so disorderly that decent citizens felt out of place. Largely because of the apathy of the good citizens the primaries fell into the hands of the professional politicians or of the machine or ring. They dictated the names to be nominated; they "ran" the primary; they "made the slate"; and, since the primary was generally attended by few beyond the supporters of the machine, the ring was generally successful. Because of these evils and because of the perversion of the convention system a new method was devised by which it was hoped that decent citizens might be induced to take part in the nomination of the candidates and that the party might be made subject to popular control. This was the direct primary.

Merits and
faults of the
primary
system

As has been seen, the chief function of the old primary was to choose delegates to the conventions. The new direct primary at its meeting actually nominates the candidates of the party for positions to be filled at the coming election. In the old system the party officials were generally chosen for the more important committees at conventions; in the new system the voters chose these officials directly. It is an attempt to put into the hands of the voters the choice of their candidates and the officers of the party without the mediation of the convention. To sum up, the old primary was but a cog in the nominating machinery. It chose delegates to a convention to nominate the candidates. The new direct primary is the nominating machine. It, by itself, without the mediation of the convention, nominates the candidates. When the convention is used with the direct primary it is not used for nominations, although some may be made, but to frame the platform or for some other purpose. The direct primary diminishes, if it does not destroy, the necessity of the convention.

The direct
primary

State
control

Another difference between the direct primary and the former system is seen in the extension of state control. Formerly the party officials were responsible for the conduct of the primaries, and the officials or interested candidates for the preparation of the ballots. Under the new system there are elaborate state laws prescribing the organization and procedure of the primaries, and the ballots are prepared and printed at public expense under the supervision of officers who, in performing this function, are supposed to be nonpartisan.

Procedure

Nomination by direct primary is accomplished by several steps. The names of the candidates are placed upon the primary ballot as the result of petition. These petitions require a number of names of bona-fide registered voters, varying in proportion with the importance of the office.¹ The signatures on petitions must be submitted to the registrar of voters or some other official who certifies their correctness. The ballot is then prepared by the proper authority—the secretary of state for state officials; the city or town clerk for municipal or town elections. In all cases the ballot is of the so-called Australian type, which requires the voter to mark the names of the candidates for whom he desires to vote.² After the ballots have been counted and the result certified, they are returned to the designated authority and preserved against the possibility of a demand for a recount. In the direct primary there is no opportunity for discussion; it is nothing more nor less than a preliminary party election.

Open and
closed
primaries

There are two kinds of direct primaries—open and closed. At the open primary any qualified registered voter may take part. It is therefore not a meeting of the members of the party held prior to the election to nominate candidates, but a preliminary election. At the closed primary only the members of the party are admitted. Party allegiance is determined by

¹Sometimes a percentage of the registered voters is required, but in Massachusetts it is a fixed number—for state officers a thousand voters; for municipal officers and town officers not less than five voters for each ward in the district. See C. A. Beard, *American Government and Politics* (3d ed.), p. 393, for a discussion of methods by which names are placed on the ballot and their order.

²See pages 92–99.

some sort of test. Could a test be devised which would not defeat the advantages obtained by the secrecy of the ballot, the closed system would be ideal. If a primary is a meeting of the members of a party, it certainly should be confined to party members. This theoretical conclusion is reinforced by experience under the open primary system. Cases have been known where a party machine, fearing defeat, has boldly admitted members of an opposing party to vote in its primary in order to perpetuate its rule. The closed primary attempts to prevent such action and to make the primary what it should be—not a preliminary election, but a meeting of the members of the party to choose the candidates of the party for the coming election. The weight of evidence and experience seems to incline to the closed primary. The argument that it destroys the secrecy of the ballot by compelling the voters to disclose their party affiliations has little merit. No voter need take part in the primaries, and those voters who do should certainly be willing to accept the responsibility and the publicity of being declared party members. The arguments against the closed primary are in fact aimed at party government and are directed towards the establishment of some method of nonpartisan nomination.

The obvious evils of the partisan method of nomination have led to advocacy of nonpartisan primaries. These have been attempted in municipal affairs, where at times the separation of state issues from city politics has seemed desirable. The system, however, was first applied to the nomination of candidates for judicial offices, since it was evident that the party primary, as employed for the selection of judges, was even more unfortunate than their nomination by convention. Partisan appeals were out of place in the determination of a candidate for the bench. In 1913 three states adopted this method¹ and other states followed their example.² In some states the law provides that voters at all primaries shall receive a special ballot on which the names of the candidates for

¹ California, Ohio, Washington.

² Minnesota, 1912; Idaho, Iowa, Kansas, Missouri, Nebraska, Pennsylvania, 1913.

judicial offices are printed and that each voter shall be allowed to vote for but one. The names of the two candidates for each office who receive the highest vote are then placed upon the ticket. In 1913 the nonpartisan primary system was adopted in California for county offices and in 1912 for the candidates to the state legislature in Minnesota.

The merits
of the
nonpartisan
primary

The obvious advantage of the nonpartisan primary is that it does away with the tests of party membership. It relieves the state from the responsibility of preserving the integrity of the parties. It enables voluntary organizations to put their candidates on the ballot on the same terms as the party organizations, nominees no longer having the advantage of bearing the party designation. The obvious disadvantage is that it strikes a blow at the party system. Party organizations and even machines are held responsible for the candidates they select. The average voter frequently needs and welcomes the advice which comes to him from the official indorsement of a candidate by a party committee or convention. Those who regard parties as the source of many of the evils of government welcome the introduction of the nonpartisan primary. Those, however, who believe that parties are necessary and oftentimes helpful instruments in the process of election deprecate anything which injures their influence. They therefore condemn the nonpartisan primary.

The effect
of the di-
rect primary

The movement for the direct primary has spread throughout the United States.¹ This movement was bitterly attacked at first by the organizations and enthusiastically welcomed by reformers. It has been in operation a sufficient length of time to make an estimate of its merits and faults possible.

Merits and
faults of
the direct
primary:

The direct primary was enthusiastically hailed by those who resented the power of the party organization. The selection of committees in conventions and the action of the conventions themselves seemed to take the control of the party out of the

¹All but Connecticut, Delaware, North Carolina, New Mexico, and Rhode Island have direct primaries of some description. In Alabama, Arkansas, Georgia, South Carolina, and Texas these are held under party rule and not made compulsory by statute.—American Year Book (1920), p. 209

hands of the voters and to rest it in the hands of a select few who appeared almost irresponsible. This distrust was strengthened by certain notorious instances where the party organization totally misrepresented the desires of the voter. It seemed that if the voters could choose the party officials directly at their primary meetings they would control the party organization and its destinies; that they would "break the power of the organization." Where the organization was a corrupt machine, misrepresenting the desire of the voters, this was a laudable purpose. Where, however, a true political organization existed, although beyond the immediate control of the voters, yet reflecting their desires, it would be a misfortune to break such an organization. The complicated processes of nomination and election necessitate organization. Organizations require time and experience in order to perform their tasks satisfactorily. Constant change weakens the organization and defeats the very purpose for which it was created.

(1) Democratizes party machinery

The high hopes of the reformers—that the direct primary would destroy the machine—have been disappointed. It is true that the organizations have been hampered in their work, and in some instances they have been made more directly responsible to the voters. However, in those communities where a machine existed the machine has been able, with a little more effort, to control the primaries almost as successfully as it controlled the convention. Under the old system of primaries only the loyal party members attended. Under the new system, while a larger percentage of the voters are present, the majority attending are still the faithful supporters of the organization. The merit of the direct primaries in destroying the machine is potential rather than actual.

[Direct primaries do not destroy the power of the machine]

The advocates of the direct primary claimed that it would encourage more active participation by the rank and file in the affairs of the party. In a large measure experience has substantiated this claim. It must be confessed, however, that in many communities the activities of the rank and file are confined to signing the nomination papers which are placed before them by the organization or, at most, to attending the primaries and marking the tickets prepared for them by the

(2) Encourages active work

organization. Nevertheless it is frankly admitted that since the process of getting the name on the ticket, and thus before the voters, is open to any member or group of members of the party, there is the opportunity freely given to all members to express their opinion and to engage in the direction of the affairs of the party. This has its good and bad effects. If the rank and file are genuinely interested in party affairs and are willing not merely to be active but to assume a measure of responsibility, the direct primary has accomplished a great deal. As has been shown, an oppressive organization of a party or a political machine can exist only on the sufferance or desire of the members of the party. Indifference or unwillingness to perform the necessary drudgery of a party organization more frequently permits machine rule than does the actual desire for corruption on the part of the voters. If the members of the party are genuinely interested in the party and are willing to do their share in managing its affairs, then the direct primary is an excellent device to enable them to express their desires and assume responsibilities. If, however, activity means mere meddlesomeness, a desire to exercise power without assuming responsibility, the direct primary may be the means of ruining a good political organization. Even at their worst, party organizations accept the responsibility for their acts and attempt to carry out with considerable consistency the policies for which they stand. Organizations are more stable than temporary coalitions of voters.

(3) Secures
better men

Another claim of the advocates of the direct primary was that the system would secure better men as party candidates. The evidence on this point is conflicting. Without doubt the direct primary gives to the party members an opportunity to reject a corrupt candidate who, under the convention system, might be foisted on the party at the dictates of a machine. Too many times machines or organizations have been guilty of this. Yet in those states where the organization existed for the genuine advancement of the party interests, this accusation could seldom be proved. There the organization, not from any superior virtue, but from shrewd political wisdom, scrutinized with care the qualifications of all the candidates. The direct primary

does not give this opportunity. Without doubt the voters do examine with some care the candidates for the more important offices, but the candidates for the minor offices are frequently unknown to the rank and file. They are put on the ticket as the result of the activities of their friends, and the average voter is sometimes confronted by the names of several candidates, about none of whom does he know anything. Theoretically, the voter should have informed himself concerning the merits of these candidates; practically, he does not. It has thus happened in at least one state that such an important officer as the state treasurer received the party nomination through the resemblance in the spelling of his name to that of the former treasurer, and the voters unconsciously nominated and later elected, under misapprehension, an officer whose administration was so dubious that he was forced to resign before his term had expired.

The direct primaries bring out a larger vote wherever there is a contest. The evidence on this point is overwhelming. They give to the ordinary voter the opportunity directly to express his opinion. In many communities this is eagerly sought. Where the vote at the primary represents the intelligent opinion of the voters, it is of great advantage, for it strengthens the party and encourages the organization. Where, however, the vote is unintelligent and ignorant, little advantage can be seen in increasing its size. The intelligence of the vote, rather than its size, should be sought.

The direct primary is really a preliminary election within the party. Like other elections, it leaves no room for discussion and compromise, but its action is final and conclusive. In the convention system the merits of the candidates may be discussed and their chances canvassed, and the various votes which are taken for nomination may show the relative strength of the candidates and disclose their strength and weakness. The best candidate or the best ticket is not always the one which appeals to the greatest number. In making up a ticket considerations of geography and of race and differences of opinion concerning party policy must be considered. In the convention these can be discussed, weighed, and compromised.

(4) Brings out a larger vote

(5) Its decision final

Not so in the direct primary. Appeal and argument, it is true, precede the vote, but nomination by the direct primary is is if the candidates were nominated at a convention where every party member was a delegate and where the first ballot was conclusive.

(6) Gives
opportunity
for dema-
gogues

The criticism perhaps most frequently leveled at the direct primary is that it gives opportunity for a demagogic appeal. A candidate for nomination is pictured as traveling about his constituency, appealing to the self-interest of the voters, and promising favors in return for support. In some cases this may be true. It is admitted, however, that in such instances substantially the same appeals to the same motives may be made by the candidates of the opposing parties once they are nominated. It may well be doubted whether this accusation has very much force.

(7) Prevents
better class
from con-
testing

It is said that the direct primary, involving as it does a popular appeal directly to the voters, prevents the better class of party members from attempting to secure the nomination. This may be true, but it would seem that the contention is without merit. If a candidate for public office is unwilling to submit his record and to appear before his constituents, he has little claim upon their support. Such men, when nominated by the old convention system, expected to be carried into office by the momentum of the party organization. A more valid objection and one which may deter a certain class of men is found in the fact that the direct primary may require two campaigns—one for nomination and a second for election. This may justly be considered to impose too great a burden upon candidates of a certain type.

(8) Involves
expense

Since nomination by the direct primary entails two campaigns, it also involves a larger personal expenditure by the candidates and thus may militate against the nomination of candidates who have little means. Such candidates, when nominated by the convention system, had their campaign expenses paid by the party organization. In the matter of nomination the party organization cannot properly defray the expense of one candidate and not of the other contestants. Thus the expense must be borne either by the contesting

candidates themselves or by their friends and supporters. This gives the opportunity for certain groups or interests to make their influence count to an unfair degree and works against the chances of a contestant of few resources, unsupported by a group of large means. In many states, however, the expenditures of contestants for nomination are as carefully regulated by law as those of candidates for election, and the criticism loses some force. Nevertheless it must be admitted that the direct primary has seriously increased the expense of the candidates.

In most states a plurality of votes cast is sufficient for nomination. There is here a grave danger that the candidate nominated may be only the choice of a minority of the party. Thus it has happened not infrequently that groups within the party have put on the primary ticket names of candidates for whom there was little chance of success, for the sole purpose of dividing the strength of their opponents. It has also happened that men of force and character have refused to contest the nomination lest the division of their strength might result in the choice of an inferior candidate.

(9) Danger
of choice
by the
minority

Various methods have been attempted to avoid this. In the Southern states a rule has been introduced that the successful contestant must receive an absolute majority. If none receives such a majority a second ballot is taken on the two highest candidates. By the Iowa law of 1907 the contestants for party nominations for the county, state-district, and state offices must receive not less than 35 per cent of the total party vote. In case no candidate receives this, nomination is made by a regularly constituted convention. In the Idaho and Wisconsin laws of 1909 and 1911, respectively, systems of preferential voting were introduced by which the voter marked his first and second choices, and a majority of the votes was necessary for the successful candidate. In Idaho the largest number of first-choice and second-choice votes is required, in Wisconsin a majority of the first and second choices. It seems clear that some such method should be introduced. The scheme in the South of requiring a second election in case no candidate obtains a majority puts too great an additional burden upon the already overloaded electorate. The Iowa method may result in a

[Safeguards
against
minority
choice]

return to the convention system with all its advantages and evils. A system of preferential or proportional voting is the ideal way to meet this evil. Although such systems are being gradually adopted in Europe, the legislatures and electorates of the United States seem to fear their apparent complexity, and they have been adopted in but few instances.

(10) Difficulty in framing the party platform

Nomination by the direct primary fails to provide for the formulation of the principles for which the party stands. Under the convention system this function was performed in advance by the delegates who nominated the candidates. This is practically impossible in the case of the direct primary. Various attempts have been made to meet this deficiency. In some states—New York and Massachusetts, for example—conventions are still held where the principles of the party are formulated and the platform drawn up. In such cases it can happen that the candidates chosen at the primaries may not be in harmony with the platform which the party has adopted. In Wisconsin the formulation of the platform is left to a meeting of the candidates and party officials chosen by the primaries. A somewhat similar provision has been made in Kansas. None of these is altogether satisfactory. A platform can best be formulated in a committee chosen by widely distributed party representatives. Under the convention system this was both theoretically and actually done. The drafting of the platform and the nomination of the candidates by the same body generally insured agreement. To leave the platform to the convention and the nomination of the candidates to the voters may, as has been said, result in a conflict of ideas. To leave the formulation of the platform and the selection of party officials to candidates chosen at the primaries insures agreement of candidates and principles, but does not guarantee satisfaction to the members of the party. If party platforms were considered actually as important as they are in theory these questions might constitute a serious indictment against the system. Generally, however, the platforms framed by the convention, the committee, or the candidates are designed to attract votes and to consolidate criticism of opponents rather than to set forth a very definite party program.

In 1912 South Dakota adopted a system which seems most complicated if not "freakish," but which was designed to meet the criticisms discussed and to insure popular control of the machinery of the party, the choice of the candidates, and the formulation of the platform. The legislature, in 1913, attempted to replace this law by one of a more orthodox type. In 1915 it succeeded, but in 1918 the Richards Law was adopted through the initiative and referendum by a comfortable majority. The law provides in general for a closed primary with a party committee chosen by the party voters of each precinct. The unique features are that it combines to a certain extent the representative convention with the principle of direct selection. In November of every odd-numbered year precinct elections are held for the purpose of choosing one member for the county committee and three county proposal men. A county proposal meeting is held which chooses state proposal men, who meet in December, propose candidates to be voted on at the party primary, and frame a party platform. Provision is made for the minority to offer candidates and make minority proposals. After this meeting the county proposal men are reconvened and indorse by vote the various candidates and issues. In March occur the primary elections, which are conducted according to the ordinary system of direct, closed primaries. A novel feature is the provision for the party indorsement of candidates for appointive positions. Applicants for such positions may file their names with the secretary of state, who submits them to the state central committee, which—acting "in public session and without subcommittees," by open ballot and majority in vote—indorses the candidates. Provision is also made for a party recall. The expenses of this system are borne by the taxpayers. Proposal men and party committee men receive mileage at the rate of five cents a mile, and where candidates are required to debate, a compensation of ten cents a mile is given them. The expense of the publicity pamphlet is also paid by the state.¹

(11) The
Richards
primary law
of South
Dakota

¹For a discussion of the Richards Law see *American Political Science Review*, Vol. XIV, pp. 93-105.

(12) Conclusions

Many faults can be found in the direct primary system. These faults are both inherent and accidental, theoretical and practical. Nevertheless, in spite of all criticism—criticism which comes especially from the party organizations—the direct primary commends itself to the rank and file of the voters. It does give the opportunity for the democratic control of the party organization. It does afford a chance in a very direct way to rebuke or overthrow a corrupt machine. The fact that it does not always do so and that it sometimes produces unsatisfactory results seems to weigh less in the minds of the voters than the fact that the opportunity is theirs. In spite of all criticisms which have been leveled, justly or unjustly, against the system, no state adopting the system has returned to the old system of nomination by party conventions, except New York.¹ With the recent increased emphasis upon party regularity and the increased strength of party organization the attacks upon the direct primary have been redoubled. At present it seems not unlikely that in some states the direct primary may be abandoned.

¹ By a law signed May 4, 1921, New York returned to the convention system for the nomination of candidates for governor and United States senators, and elective state officers and justices for the Supreme Court. Candidates for representatives to Congress, for the state senate and assembly, and for city and county offices will continue in general to be chosen at the direct primaries by the enrolled voters.

CHAPTER V

THE CAMPAIGN

A political campaign may be defined as an organized effort on the part of a political party to elect its candidates to office.¹ The campaign
The purpose of the campaign is to arouse the enthusiasm of the members of the party to the pitch that will lead them to vote the party ballot at the polls. The campaign also attempts to attract to the party the independent vote which exists in every community; that is, those voters who are not deeply attached to any one party and who may be led to support the issues or the candidates of any party which strongly appeals to them. A third purpose is the attempt to gain their support. Finally, a political campaign tries in various ways, some subtle and some entirely open, to discredit and criticize the candidates and principles of other parties.

Practical politicians have been known to speak of campaigns as "hoop la" or "hurrah" campaigns; that is, campaigns where a noisy appeal is made to the emotions of the voters. While such an appeal is never absent in any campaign, in recent years its value is generally discounted. The direct antithesis of the "hoop la" has been found in the "gum shoe" or "still hunt" campaign. In a performance of this sort the attempt is made to deceive the opponents into fancied security and to convince supporters of the party by quiet and personal influence. This campaign may be very successful in small communities, but in large constituencies it is hardly possible in its extreme form. A campaign of education is sometimes widely advertised. By this is meant that the Kinds of campaigns

¹For a brief account of campaign methods see P. O. Ray, *An Introduction to Political Parties and Practical Politics*, chap. x. This is briefly treated in Kimball, *National Government of the United States*, pp. 129-135. For a more extended treatment see M. Ostrogorski, *Democracy and the Party System in the United States*, chaps. ix, x.

emotional element is discounted, while spoken and printed appeals are addressed to the voters. These appeals are nominally addressed to the voters' intelligence. They seldom contain palpable untruths, but more frequently present half-truths or distorted statements of facts. While nominally addressed to the intellect, these are really subtle appeals to the emotions. Very rarely a campaign of vituperation is initiated in which the parties and candidates make charges against one another, sometimes with a basis of truth, but occasionally actually libelous. Public sentiment in most communities is opposed to such a method, and a campaign of this sort frequently reacts upon its initiators.

The management of the campaign

The direction of a political campaign is almost entirely in the hands of the organization. The party committee, as a whole, is not generally active, although the individual members are often consulted and have general oversight over the campaign in their particular districts. The executive committee or some smaller subcommittee of the party committee generally conducts the actual work of the campaign. Very frequently, however, all threads are held by the chairman of the party committee, who controls with almost despotic power the activities of the committees, the subcommittees, and the candidates. Acting with the party committee and, in some cases, including some of its members are various subcommittees, bureaus, and councils. These may deal with publicity, with speakers, with the vote of the women, with the vote of particular nationalities, or they may be organized to emphasize some particular issue of the campaign. It should be remembered, nevertheless, that all these are strictly subordinate and have no independent resources aside from those of the party committee.

The relation of the candidates to the party committee

In a perfectly running and well-organized campaign the candidates and party committees work in harmony, but such may not always be the case. This is true particularly either where the party committees are chosen at the direct primaries, which may or may not nominate candidates in harmony with the committee, or where the candidates are nominated by one method and the committees chosen by another. But even if

there is not complete harmony of purpose a pretense is maintained. In case of actual conflict between the candidates and the committee the committee generally wins. This is because of the expense involved in the campaign. Few candidates are able to finance, independently of the party, their own campaigns. Party resources are greater than those of individuals. A second and more compelling reason lies in the fact that the committee generally possesses the confidence of the active workers within the party. Candidates at best are temporary, while the organization of the party is permanent.

The most practical method of influencing the voter is by personal canvass and solicitation.¹ This is very effective in rural communities and may be carried on by the candidate himself or by the members of the party committee. In larger communities, however, such solicitation and canvass requires an effective organization and the expenditure of considerable sums. In the Republican party in Pennsylvania it is stated that during a heated campaign every tenth or even every fifth man becomes a party watcher for the purpose of learning the political opinions and sentiments of the voters assigned to him. He reports to superior officers, who, in turn, bring pressure to bear upon a disaffected party member.² It is doubtful if such a thoroughgoing organization exists in any other state, for in few states is the Republican organization as efficient as in Pennsylvania. In general, attempts are made to get at the sentiments or opinions of the voters and to bring influence to bear upon them.

Printed appeals run all the way from post cards and circulars sent to the voters, through newspaper articles and advertisements, to posters on billboards and appeals made by the motion pictures. This is an extremely expensive proceeding. It has been estimated that it costs five cents to send out a post card and ten cents apiece to circularize the voters by means of a letter. Advertising in magazines and newspapers and on billboards and telegraph poles is more and more resorted to, but is becoming increasingly expensive.

¹ See, especially, P. O. Ray, *An Introduction to Political Parties and Practical Politics*, chap. x.

² Jesse Macy, *Party Organization and Machinery*, pp. 121-122.

Campaign
methods:
(1) Personal
solicitation

(2) Printed
appeals

(3) The
campaign
textbook

Two special kinds of printed appeals must be noted. The campaign textbook, which is designed primarily for use by speakers and active party workers, contains the official documents of the party, the party platform, the nominating speeches and exposition of the party services,—placing the party in its most favorable light,—biographies of the candidates, and some of their more striking speeches. Although this textbook is designed primarily for the active workers in the party, it is sometimes distributed among the voters.

(4) Public-
ity pam-
phlets

Because of the expense of instructing the voters and the recognition that the voters ought, nevertheless, to be enlightened, an increasing number of states distribute information at public expense. The first state to initiate this scheme was Oregon. In the Oregon pamphlet each candidate must pay a small fee for the use of at least one page and is allowed to buy more space at cost. Each party also may buy pages. In the publicity pamphlet are printed also the measures which are to be voted on directly by the people, and include those proposed by the popular initiative and those put before the voters by the referendum. Interested groups may also purchase space in the pamphlet and present arguments for and against these measures. This idea of a publicity pamphlet of some sort is spreading throughout the states.¹ Other states give information at public expense on the measures submitted to the voters for decision. This generally involves sending to each voter a reprint of the proposed measures.²

(5) Rallies
and
speakers

In all campaigns meetings known as rallies are held. These vary from small gatherings held in the wards and precincts, addressed by local candidates or prominent citizens, up to the large political meetings where the speakers are the principal candidates and persons of state-wide or national reputation. Not infrequently the national party is vitally interested in carrying a state election, and may put at the disposal of the state committee cabinet officers or influential members of Congress. But whether these rallies are small or large they all

¹ Among the states employing this method are Indiana, North Dakota, South Dakota, Wyoming. ² Massachusetts is an example of this type.

have this in common—they attract mainly the members of the party, and the appeal is made to confirm party loyalty and to arouse enthusiasm rather than to convert the independent voters or those of other parties. Generally the rallies are of a cut-and-dried sort, and the enthusiasm engendered is often palpably made to order. Rarely is the speaker questioned or, to use the English phrase, "heckled"; in fact, American audiences generally resent questioning, and the police are frequently called to put out such a disturber. Informal political meetings are sometimes held on street corners and in parks, where itinerant orators, known from the platform they mount as "soap box" orators, address whatever audience they may gather. In recent years very effective informal rallies have been held at the noon hour around gates of manufacturing establishments. Here the audience is generally not confined to the members of any one party, and the speaker has the opportunity not merely to arouse enthusiasm but to convert voters to his point of view.

In former days the torchlight procession made a most picturesque method of appeal, but this has generally been discarded for the daylight procession, where the marchers may be seen and their personal influence made even more effective. It is to be doubted, however, whether even this ever turns many votes. Political clubs, ranging from the permanent associations of a large city down through the ward or precinct club to the temporary organization arranged for the campaign, have considerable influence. They furnish a common meeting place for members of the party, where enthusiasm may be engendered and orders and directions given. Before the advent of prohibition many of these clubs had their headquarters over or near a saloon, and the saloon-keeper was not infrequently the most influential man in the club, keeping in close touch with some superior officer of the party.

Political campaigns are expensive. Even the most innocent and high-minded campaign requires a large sum to finance its operations. Among legitimate expenses of the campaign may be included rent for headquarters—not simply the headquarters

(6) Other
campaign
methods

Use of
money in
campaigns:
(1) Officers

(2) Clerical
hire and
postage

of the state committee, but of the party officers in the different cities throughout the state. An immense mass of correspondence and bookkeeping is necessary now to conduct a campaign. In some cases, for small communities, this is performed by volunteer workers, but in general the burden is so great that the committees employ a large office force of stenographers, secretaries, and clerks. With the increase of state supervision over the party finances, the party committees are obliged to keep careful and accurate books, which necessitates the employment of expert bookkeepers and auditors. The amount of mail matter which is distributed in a political campaign is enormous. This is true even in those states where publicity pamphlets are issued under state authority. Special appeals to certain classes of voters are sometimes sent out at the cost of from two to ten cents a letter. This, in New York State, would involve the expenditure of from \$35,000 to \$175,000 for each communication.¹ In addition there is a vast amount spent on telephones and telegrams.

(3) Personal
and travel-
ing expend-
itures

Sometimes the members of the party committee give their services and pay their own expenses; more generally, however, the traveling and hotel expenses of the committee are paid from the party funds. This is practically always true of the expenditures of the candidates for the principal state offices. But in this case the candidates themselves often contribute to the party fund.

(4) Ex-
penses of
workers

(5) Expend-
itures for
printed ma-
terial and
advertisements

The workers vary all the way from speakers, who are sometimes paid \$100 or even as much as \$1000 a night, down through the fees paid to lawyers, writers, editors, or advertising agents for preparing printed material, to the sum paid to the canvassers and distributors of party literature. The expenditure for printed material, including the cost of printed circulars, handbills, posters, the campaign textbook, and space bought in newspapers and magazines, involves an enormous amount of money. A single-page advertisement in one issue of a paper may cost \$5000, but there is little objection to this method provided it is open and aboveboard. To insure this both federal and state laws have been passed directing

¹A. N. Holcombe, *State Government in the United States*, pp. 218, 219.

that all paid political advertisements shall be so indicated and signed by a party committee. A more insidious method is for the party, through its committee or one of its members, to purchase control of a newspaper and to bend the editorial policy to its purpose. No objection can be taken to this provided it is known, and to this end the federal laws require the periodic publication of the names of the stockholders of every publication using the mails.

Included in the group of miscellaneous expenditures is a variety of disbursements hard to classify—for bands and buttons, for halls and bunting, for flags, banners, red fire, and the like. To few of these can anyone validly object. The danger lies in the amount and variety of the expenditures—to hire a band or to give the contract for the manufacture of the campaign button is perfectly proper, yet both of these proper acts may be used to obtain votes illegitimately.

(6) Miscellaneous expenditures

Illegitimate campaign expenses include the expenditure of money both for things which are morally wrong and for things which are forbidden by law. Bribery, of course, falls in the first category, while payment for transportation to the polls is an example of the second class. These will be more fully discussed under the regulation of state campaign expenses.

Illegitimate campaign expenses

The most obvious and least objectionable source of supplying the party funds is the contributions of the members of the party.¹ No fault can be found with contributions from individuals made for the purpose of meeting the legitimate expense of a campaign in order that the party may realize its ideals. Criticism, however, does justly arise when the contributions are extorted under pressure. The appeal may be made either to the hope of reward or to the fear of punishment. Before the widespread introduction of civil-service reform, party assessments were not infrequently made upon officeholders. The demand was bluntly put: pay the assessment in order that you may retain your office, for if the party is defeated, you lose your job; and if you don't pay, the party official will discharge you. Not only were assessments made upon

Sources of party funds

¹See C. A. Beard, *American Government and Politics* (3d ed.), pp. 667-672.

officeholders but upon candidates for election, and it is on record that at one time the candidates for judicial office in New York were expected to pay to the party treasury between \$10,000 and \$25,000. This comes dangerously close to purchase of office. Theoretically, it may be difficult to distinguish between the free-will contributions of interested members of the party and the assessments levied upon officeholders, actual and prospective; practically, however, it is easy. The former is allowable, the latter reprehensible. A question sometimes arises whether a party should accept an unlimited amount from any one contributor; abstractly, the contribution of an individual should be limited only by his means and his interests; but, actually, if too large contributions are accepted, the donors acquire an undue influence in the direction of the party affairs. Thus party managers not infrequently proclaim that contributions will be limited to a comparatively small amount.

Contributions from corporations

Formerly contributions from corporations were eagerly sought by all parties and were lavishly bestowed, often given to opposing parties by the same corporations. This source of revenue was shut off by law as the result of the disclosures following the campaign of 1904, where huge contributions were made by certain corporations, particularly insurance companies. Three objections to contributions from corporations are obvious: In the first place, the money in the treasury of a corporation belongs to the stockholders, whose political affiliations are probably varied and not unanimously in agreement with the party which receives the contribution. Second, by giving to both parties the corporation assures itself of influence and protection whichever party is successful, and thus tends to break down the bipartisan system. Third, the size of corporate contributions was frequently so great as to give them undue influence in determining the affairs of the party, and hence the rank and file of all parties realized that the political system was gradually being transferred from the control of the people to that of a few wealthy individuals.

The most abominable source of party revenue, fortunately not general throughout the United States, is found in the

protection of crime and vice. The disclosures of the Lexow Committee showed to what an extent this was prevalent in New York City in the last decade of the nineteenth century. Not merely were regular tariffs established for saloons, gambling-houses, and houses of ill-fame, but pickpockets actually paid for the privilege of operating unmolested in certain localities.

Not until 1890 was any attempt made to regulate the use of money in elections.¹ Of course bribery and certain other offenses were illegal by general statute law, but there were no special laws for limiting the sources from which money might be collected or the amount that might be spent, and there were no requirements for publicity. All these matters were regulated in England by the Corrupt and Illegal Practices Prevention Act of 1883, and since that date British elections have been singularly free from corruption and the objectionable features which have too often characterized American elections.

Regulation
of the use of
money in
campaigns

The problem in Great Britain, however, was far more simple than that in the United States. In Great Britain there is generally but a single office to be filled at each election in each district. The candidate for Parliament is usually the sole representative of his party in his district. On the other hand, in America there are both numerous candidates put forward by each party for the offices which the party desires to capture and a multitude of offices to be filled. No one candidate is the sole representative of the party. All the candidates from the governor down are aided by the same party organization. It may be true that a voter may be bribed or corruptly influenced to vote for a specific candidate, but in so doing he generally votes the entire party ticket. It is almost impossible, therefore, to trace corruption back to a single candidate. To punish a state treasurer for the corruption practiced by the party in behalf of the election of its candidate for governor would be unfair, yet the success of the ticket headed by a candidate for governor guilty of corruption may make possible the election of the state treasurer.

Differences
between
Great
Britain and
the United
States

¹For an excellent treatment of this subject see A. N. Holcombe, *State Government in the United States*, pp. 221-239.

Few contests for nomination in Great Britain

A second difference between the United States and Great Britain lies in the fact that in Great Britain there is frequently, if not generally, little contest for nomination. In the United States nominations are hotly contested, and in some districts the nomination is equivalent to an election; hence the problem becomes twice as complicated as in Great Britain. Thus, even if it were possible satisfactorily to regulate corrupt practices in American elections, the campaigns for nomination would still be fertile fields for corruption. Moreover, in Great Britain the agent of the candidate is his personal choice, and the candidate may be held personally responsible for the acts of his agent. In the United States, however, the party organizations frequently have the same authority as the candidates, both being the choice of the electorates in the direct primaries. To hold the candidate personally responsible for the action of a party committee of which he may not approve and to the choice of which he may have objected would be manifestly unfair.

In Great Britain the candidate is expected to finance his own campaign

Finally, in Great Britain the candidate is expected to finance a large part of his campaign. It is true that if a very desirable candidate is unable to do so, he may receive a grant from the general funds of the party, but there is little attempt made to finance the campaigns from the local constituency. In the United States, however, each constituency is expected to finance in part, if not entirely, the expense of the campaign, and the candidate, while expected to make some contribution, is not supposed to meet a large part of the expenses.

American Corrupt Practices Acts

The attempt to control election expenses was begun by New York in 1890 and followed by Massachusetts in 1892, but these early laws were entirely inadequate, although the New York law required the candidate to file an account of his expenses.¹ In 1893 Missouri limited the amount that might be spent by candidates and committees, and in 1903 the principle of publicity of expenditures at the primaries was adopted by some of the Southern states. None of this legislation was

¹See A. N. Holcombe, *State Government in the United States*, pp. 221-229, and C. A. Beard, *American Government and Politics*, pp. 701-703; also Senate Document No. 86, 59th Cong., 1st sess., pp. 5-10.

very effective, largely because it was not well supported by public opinion. After the insurance investigations of 1904, however, a change of opinion took place. The rank and file of the party were shocked at the thought that their political institutions were coming under the control of an oligarchy of wealth. The large corporations themselves discovered that they were the dupes of the system and that contributions in many cases were a euphonious term for blackmail.

Effective regulation began in 1907, when Congress prohibited all corporations from contributing to the campaign funds of federal officers and all national banks and corporations engaged in interstate commerce from contributing to any campaign fund. In 1910 the federal law required sworn statements of contributions and expenses at the close of the campaign from national and congressional committees and all other committees spending money in two or more states for the purpose of influencing federal elections. This publicity was made continuous, and in 1911 the amount which candidates might spend in both the primary and the election to Congress was limited to \$5000 for candidates for the House and to \$10,000 for candidates for the Senate. The states followed suit, and now nearly one half of them prohibit campaign contributions from corporations and about three fourths provide for filing the returns of contributions and expenditures.

The many methods which have been devised by the states to meet this evil may be grouped under several heads. Some of the states limit the amount which any candidate may spend for election. Perhaps the best examples are the laws passed by Oregon in 1908, California in 1909, Wisconsin in 1911, and Massachusetts in 1914. A maximum amount is fixed in these and similar laws. In the Oregon law this is a percentage of the salary of the office sought, which, in the case of the governor, amounts to about \$1250, and of course a much smaller sum for minor candidates, who receive far less aid in their campaigns from the newspapers than does the governor. The California law permits the expenditure of \$250 for the first 5000 votes in a district, \$2 for each additional

The regulation of expenses

State regulation of campaign expenses:
(1) Restrictions on candidates

100 votes up to 25,000, \$1 for each 100 up to 50,000, and 50 cents for each 100 votes thereafter. This would allow the candidate to expend about \$5000. Both the Oregon and the California laws, as well as others, have apparently placed the maximum amount altogether too low. Thus, in Oregon the candidate for governor could spend about half a cent for each voter, and the amount fixed in California would allow the governor to send a post card to about half of the male voters of the state.¹ It must be remembered, however, in comparing these figures with the average expense of a dollar a vote allowed in British elections, that in the United States the governor is only one of many candidates upon the ticket, which is elected as the joint result of the combined efforts of many committees and contributions to numerous campaigns.

(2) Control
of political
committees

The control of political committees was first begun in the Massachusetts Act of 1892, which defined a political committee as three or more persons acting to promote the success or defeat of a party principle or candidate. Every political committee was obliged to have a treasurer, to whom all contributions were made and by whom the money was expended. At the close of the campaign the treasurer, provided the total expenditures were over \$20, was required to file a return with the town or city clerk. In this act no limitation was placed upon the amount which might be contributed to the committee nor upon the sources from which the contributions came. The principles of this act have been adopted by other states, and in general, wherever legislation regulating the use of money is found, the political committees are required to have a treasurer who is responsible not merely for the expenditures but for the character and source of the contribution. He is obliged to file periodic statements for the federal elections and in some states for state elections. In all cases he must file final accounts after the election has taken place.

(3) Source
of contri-
butions

After the federal act of 1907, or in some instances before it, many states adopted laws prohibiting contributions from corporations.²

¹ See A. N. Holcombe, *State Government in the United States*, p. 236.

² See pages 84, 87.

The New York statute of 1906¹ attempts to make a rather precise list of objects for which money may be used in campaigns. Expenditures are allowed for the following purposes: rent of halls and expenses connected with public meetings; preparation and publication of various "literary materials"; compensation for agents in order to prepare and supervise articles and advertisements for the press; payment of newspapers for publishing materials; rent of offices and clubrooms; compensation of clerks, agents, and attorneys managing the "reasonable business of elections"; preparation of lists of voters; personal expenses of candidates and traveling expenses; compensation of workers at the polls; and the hire of carriages.

(4) Definition of campaign expenses

Professional politicians claim that the chief consequences of these laws have been to encourage perjury and that in many instances the laws have been openly and shamelessly evaded and violated. Nevertheless some good effects have resulted. The amount spent in elections has undoubtedly decreased. Contributions from corporations have almost entirely ceased, although the testimony on this point is by no means conclusive. The more objectionable objects of expenditures have been removed, and more reliance has been placed upon the unpaid services of individuals. Nevertheless much remains to be done before our system will be as free from corruption as is the English system.

Effect of corrupt-practices law

Many of the topics which have been discussed in the previous pages are included in the general election laws of the different states. These laws, with the various amendments, are extremely long and complicated, the 1919 edition of the New York law making a pamphlet of over three hundred pages, while the New Jersey and Massachusetts laws are not much shorter. Aside from the topics already discussed, and the more technical provisions, certain general principles and common features are found in the election laws of almost every state.

Election laws:

Certain officers are generally placed in charge of the entire electoral machinery—in most states the secretary of state together with the county clerks or city or town clerks, although

(1) Election officers

¹Chap. 503, Sect. 1. See C. A. Beard, *American Government and Politics*, pp. 702-703.

some states appoint special officers to perform these functions. In general the officers are charged with issuing the blanks for nomination, the preparation of the ballots and their distribution to the local election officers, and the return of the official counts of the ballots. The exercise of these duties is a strictly nonpartisan function, and in general this theory is carried out in practice. There are few cases on record where any of these election officials have refused to comply with the regulations of the law in the preparation and distribution of the ballots. The same high standard has not always been maintained in the care of the ballots after the election.

(2) Local
election
officers

Practically all states provide for bipartisan boards of poll clerks or ballot clerks in each polling place. These officers are variously chosen and are also supposed to act in an entirely nonpartisan manner in delivering the ballot to the would-be voter, in receiving the same when duly marked, and in counting it after the election. The high standards which have characterized the more important state officials are not always met with in the local officials. All too frequently accusations are made and charges proved against these local officials, who may refuse to allow an elector to vote, or miscount, sometimes intentionally, the results of the election, or destroy or lose the ballots committed to their care.

(3) Watchers

Most states allow duly authorized representatives of all parties to act as watchers. These watchers are to see that fair play takes place and that voters are allowed to cast their votes according to their legal rights. It is their duty also to report violations to the proper authorities and, above all, to see that a fair count is made by the polling officials.

(4) Official
forms for
returns

The results of the election must be entered upon standard tally sheets furnished by the state and duly certified by the proper officials at each polling place. These, together with the counted ballots, which, according to most laws, must be sealed, are delivered to some higher authority for safe-keeping against the possibility of a recount.

(5) The
policing of
the polls

Special provisions are made for preserving peace and order at the polling places. In some states this is confided to the ordinary police force; in others to special constables. In New

York State a superintendent of elections is appointed, who, with his deputies, investigates all questions of registration, may arrest without warrant persons who violate the election law, executes warrants of arrest, and inspects books and records dealing with registration and election.

No person is allowed to vote unless his name appears upon the register. The system and the merits of personal registration have already been fully discussed.¹ On election day the polling officers or, in New York State, the deputies of the superintendent of elections see to it that the provisions of the law are obeyed, that no one votes unless properly registered, and that every person whose name appears upon the register is given the opportunity to vote. (6) Registration

Most states now require that each voter shall receive a ballot and mark it in secret, folding it so that the election officials and watchers are unable to determine how he has voted. The object of these provisions is to secure freedom of choice and to prevent intimidation as well as to limit the possibility of bribery. Purchase of votes may take place, but the buyer has little or no opportunity to determine whether the venal voter has fulfilled his part of the bargain. (7) Secrecy

Under the head of miscellaneous provisions are classified the provisions prohibiting parties from paying for the transportation of voters to the polls; forbidding treating, betting, solicitation of votes within a certain distance of the polls; and, before 1918, the requirement that all saloons should be closed. In general the election code is designed to insure that the electorate unhampered and unintimidated may freely express its opinion. Although this ideal is seldom attained, a vast improvement in orderliness and decency has taken place during the last thirty years. (8) Miscellaneous provisions

THE BALLOT

The ballot is the sole means by which the electorate can formally express its will. Public opinion may be formed by debates, discussions, and newspaper articles. This public opinion may be brought to bear upon the officials of the state. But The importance of the ballot

¹ See pages 61-62.

the ultimate authority of the electorate is exercised only through casting the ballot. While the laws regulating the conduct of elections, the policing of the polls, and the prevention of corruption are important and necessary and often greatly emphasized, the regulations concerning the form and character of the ballot are of equal importance, although their necessity was not so early appreciated. In the course of the past thirty years following the legislation regarding corrupt practices, attention has been more and more centered upon the perfection of the ballot.¹

Early
regulations
concerning
the ballot

Thus, in the middle of the nineteenth century the legislation concerning the ballot was chiefly characterized by its inadequacy. The preparation of the ballot was left entirely to individual initiative as expressed either by the party or by the candidate. There were some restrictions, it is true, to the effect that all ballots should be on paper of the same color, and some limitations as to its size, but in general state authority did not interfere with either the preparation or the distribution of the ballot. On the voter's arrival at the polls ballots of all sorts were forced upon him, and he reached the ballot box frequently bearing not one ballot but the tickets of several parties or combinations of candidates. There, before the election officials, he made his selection in public either on the ballots he had received at the polls or on a previously prepared ballot given him by some interested person. The voter then declared his name and residence; the polling officer repeated these in a loud voice for the benefit of the polling clerks and watchers and, if no objections were made, received the ballot from the voter and deposited it in the box. Secrecy was absent, opportunity for influence, intimidation, and bribery was given, and too often there was a possibility that more than one ballot had been cast.

Ballot
reform

Beginning in 1888 Massachusetts introduced what in this country is known as the Australian ballot. The chief features of the Australian ballot as used in Australia were that it was prepared by state authority and that the names of the candidates

¹ P. O. Ray, *An Introduction to Political Parties and Practical Politics*, pp. 322-359, prints facsimiles of various types of ballots.

were printed upon the ballot in alphabetical order without party designation. Since in Australia there was generally but one office to be filled at each election, the number of names on the ballot was small and the choice of the voter made easy. The Australian ballot was never introduced in the United States in its entirety.

The Massachusetts law of 1888 provided that the candidates should be grouped alphabetically under each office, each candidate bearing a party designation. Like the Australian ballot, however, the Massachusetts law provided for the printing of the ballot by state authorities and designated the political parties which should be allowed the use of the party name.¹ The ballots were sent by the state authorities to the local authorities, who were responsible for them. On election day they were given to the polling officials, who delivered to each voter a single ballot, which the voter marked in secret, folded, and deposited in the ballot box. The significant feature of the Massachusetts type is that the voter must mark with a cross each candidate for whom he wishes to vote.

The Massa-
chusetts
type

In 1889 Indiana made further modifications to the Australian ballot. The candidates, instead of being grouped by office, were arranged in party columns over which was placed some party symbol, and a method was provided by which the voter by a mark at the head of the column could vote for all the candidates nominated by his party. In order to vote a "split" ticket the voter was obliged to mark, as in the Massachusetts ballot, the name of each candidate he wished chosen. This party-column ballot was at first the most popular type and was copied by the majority of states which adopted the Australian ballot.

The party-
column type

There are certain variations to both types. The Massachusetts method of grouping the candidates by office is sometimes adopted with the addition of a circle or square in a separate place, by which the voter may vote with a single mark for the entire party ticket.² The party-column type is sometimes modified by the removal of the party circle and the requirement that the voter must mark the name of each candidate he

Variations

¹ See pages 46-47.

² Pennsylvania.

wishes elected.¹ The effect of these variations is to make each type more like the other. The removal of the circle at the head of the party column requires voters to mark each candidate, but groups the candidates according to parties. This removes the handicap upon independent voting and at the same time makes party voting more easy. The addition of the party circle to the Massachusetts kind of ballot puts a premium on party voting, but enables the independent voter to make his selection of candidates for different offices more easily than in the Indiana type.

The merits
of the two
systems:

(1) The
Massachu-
setts type

The Massachusetts method practically establishes an educational qualification. It is true that illiterates may receive aid; it is also true that ignorant voters are sometimes instructed as to the location of the names of the candidates for whom they desire to vote; but with all these aids the Massachusetts ballot presents considerable difficulties. One great advantage of that ballot is that it does not discourage independent voting. The voter who votes a split ticket takes no longer to mark his ballot than the one who votes for all the candidates nominated by the party. It thus provides for absolute secrecy and independence of voting and requires considerable intelligence. It was hailed as the ideal form and has been adopted by about fifteen states, including some (notably New York) which had formerly used the party-column type.

(2) The
party-
column type

The chief merit of the party-column ballot is that it enables the voter to express quickly his choice for the party candidates. It is not, like the Massachusetts type, a test of literacy. In those states where there is no literacy requirement for the suffrage it would seem unfair to add one in the make-up of the ballot. The chief disadvantage of the party-column ballot is that it puts a premium upon straight party voting and seriously handicaps the independent voter. Not only is the independent voter's task made difficult, but the very time that is required for him to mark a split ticket as compared with voting a straight ticket advertises to interested observers this form of party irregularity.

¹ Iowa.

The most serious objection to the Massachusetts ballot is that it makes it more difficult for the majority of the voters to express their opinion. In most states the majority of voters are party members and vote the straight party ticket at elections. This statement though subject to certain obvious and famous exceptions generally holds true. It would seem proper, therefore, to devise a ballot which would make it convenient for this majority to express its preference most easily. Secondly, with the multitude of candidates upon the ticket no voter is able to trust to his uninstructed and unassisted knowledge. The Massachusetts type recognizes this. Contrary to the Australian system, the candidates appear with party designations, and it may safely be asserted that in many instances the electorate votes more or less indiscriminately for unknown candidates who bear the party designation. In theory this is entirely proper, for the party designation carries with it the party guarantee of principle and, presumably, of integrity. Practically, however, the force of this argument is broken by the fact that many of the officers chosen are not political but administrative and, secondly, that the same party label may mean different things for presidential electors and for state surveyors. Even among political officers examples are numerous where congressmen or state senators are at variance with the political party whose designation they bear.

Objections
to the
Massachu-
setts type

The chief advantage of the party-column ballot is that it enables the majority of the voters to express their opinions easily and quickly. This, however, is not without serious drawback. Very often, and perhaps with increasing frequency owing to the direct primaries, there will appear on the ballot candidates duly nominated by the party and for whom the members of the party have little sympathy or approval. To make it more difficult for a discriminating member of the party to choose between the good candidates and the bad choices of his party and to advertise his selection by the time it takes him to mark the ballot is unfortunate.

Objections
to the
party-
column type

The real remedy for the faults of the ballot lies not in the adoption of the Massachusetts type or of the party-column type with modifications or improvements, but in a more serious

The short
ballot



and fundamental alteration of the electoral system. This movement has been enthusiastically sponsored by reformers in many states and is generally designated as the "short ballot."¹

The theory
of the long
ballot

The demand for the long ballot rests upon the theory that the election of numerous officers extends democratic control; that the electorate can best control the policy of the state by the direct choice of the officials who frame or administer this policy. As a theory this perhaps may be true; certainly attractive and fervid appeals are made to this principle. Practically, however, the theory is not correct. As many writers have for years been pointing out, the elaboration of the machinery of government and the multiplication of elective officers tend to restrict the free and intelligent choice of the electorate. No single elector can expect to have very definite personal knowledge of many of the candidates for whom he is asked to vote. He therefore either votes blindly or unhesitatingly ratifies the choice of his party. Where nominations were made by party conventions, and where party conventions were composed of disinterested, wise, intelligent party leaders who attempted to select the best men and best candidates as the party nominees, the party designation was perhaps a good guide. Too seldom, however, did party conventions even approximate this high standard. The introduction of the direct primary, while weakening the control of the party organization, added to the burden of the voter. Candidates for the same number of offices had to be chosen at the primary and had to be voted for at the election, and few voters were able to discriminate and to express an intelligent opinion concerning the aspirants within their own party.

The long
ballot
exemplified

That these criticisms are real may be seen from an analysis of a ballot for Multnomah County, Oregon. This ballot, which is nearly three feet long and over a foot wide, contains

¹ One of the best expositions of the necessity for simplification of the ballot is "The Ballot's Burden," by C. A. Beard, in the *Political Science Quarterly*, Vol. XXIV. The substance of this article is reprinted in "American Government and Politics," pp. 474-487, by the same author. See also R. S. Childs, *Short Ballot Principles*. The National Short Ballot Association, with headquarters in New York, is engaged in active propaganda for these principles.

142 names of candidates for 42 offices. In addition the voter is asked to express an opinion on 29 legislative proposals. An enumeration of the offices to be filled at this election will emphasize the difficulties of the voter. Voters are asked to vote for a United States senator, a representative to Congress, a governor, a state treasurer, four justices of the supreme court, an attorney-general, a superintendent of public instruction, a state engineer, a commissioner of labor statistics, an inspector of factories and workshops, a commissioner of the railroad commission of Oregon, a superintendent of water division No. 1, a judge of the circuit court, a state senator from the thirteenth and one from the fourteenth district, a representative from the seventeenth and twelve representatives from the eighteenth representative district, two county commissioners, a sheriff, a county clerk, a county treasurer, a county auditor, a county surveyor, a county coroner, a judge of the district court department No. 1, a judge of the district court department No. 2, a judge of the district court department No. 3, and a constable for the Portland district. In addition, there are ten amendments to the constitution referred to the people by the legislature and nineteen proposals put upon the ballot by initiative petition. To assume that even the most intelligent voter could, in the few minutes the law allowed him to occupy the voting booth, make a discriminating selection on this ballot is ridiculous. The absurdity perhaps is somewhat lessened by the fact that Oregon sends to each voter before the election an excellent publicity pamphlet which discusses the candidates and the proposed measures. The ballot then becomes an examination paper upon the pamphlet, but the test is too difficult. The Oregon ballot is of the Massachusetts variety, which, it may be remembered, is not the pure Australian type, but contains party designations. It may safely be asserted that the majority of the electors in Multnomah County pass this test with the aid of the party designations rather than as the result of discriminating knowledge.

According to the short-ballot principle only those officers should be voted for who are responsible for the formulation of policy and the supervision of its execution. The attempt in

the short ballot is to centralize the executive power. It is argued that if one executive is chosen in whom is vested the appointments of the other subordinate executives, the policy of the administration will be harmonized and the responsibility centered upon the chief executive. This is exactly the principle applied in national affairs, where the president and his possible successor, the vice president, are the only executive officers subject to election.

The principles of the short ballot as applied to the ballot of Multnomah County

Applying these principles to the ballot of Multnomah County, we find that the voters would be asked to choose a United States senator, a representative in Congress, a governor, 2 state senators, 13 state representatives, 2 county commissioners, as well as 4 justices of the supreme court, a judge of the circuit court, and 3 judges for the district courts, making a total of 28 as against 42 offices to be filled. This would make a somewhat shorter ballot than the actual ballot used. Enthusiastic advocates of the short-ballot principle would probably go even further and advocate the removal of the judges from the ticket, vesting their appointment in the governor or electing them by a special judicial ballot. The same principle of a separate ballot might be applied to the county officers. There would still remain to be considered the legislative propositions put on the ballot by the initiative and referendum. Even at best, however, with all the abbreviations of the ballot and eliminations of elective offices, the task of the elector is difficult. Moreover, it must be admitted that at present probably few states would consent to such a reform as was suggested in the case of the Oregon ballot.

Effect of the short-ballot movement

Although few if any states have adopted the short-ballot principles in their entirety, the movement is making headway. This is true particularly in municipal affairs, where more power of appointment is given to the mayor and thus, to that extent, fewer names appear upon the ballot. Similar movements are found in the reorganization of state governments. Always greater appointive power is given to the governor, and while it cannot be said that the number of elective officers is decreased, the choice of the increasing number of state officers has not been given to the voters. In spite of all arguments

and demonstrations the voters are apparently not yet ready to surrender their fancied control of executive offices to any one officer and insist on preserving the form of election. To a large extent this is a delusion,—a delusion which certain party organizations take pains to encourage. The more offices there are to fill, the more work there is for the organization and the less the chance that the voter will exercise independent choice. As long as the ticket contains thirty or forty names, just so long must the voter be aided in the selection of these names and instructed by party symbols as to the character of the candidates. The party organization willingly assumes the responsibility for this aid and instruction.

ABSENT VOTING

The practice of absent voting is not new in the United States. It was first introduced in 1635 in the Massachusetts Bay Colony. However, Vermont in 1896 was the first state to adopt absent voting in modern times. Its theoretical justification is in harmony with many of our election laws; namely, to insure a wide expression of popular opinion and to make that expression as convenient for the voters as possible. These theoretical considerations led to laws in a few states, but the entrance of the United States into the World War and the consequent absence of large numbers of the electorate greatly accelerated the movement. Up to 1917 twenty-four states had adopted laws which in one way or another provided for some form of absent voting. These laws are extremely varied, but in general they contain the following provisions.¹

Absent
voting

Summary
of laws:

Some states provide that the voter must be a certain distance from his home; some states restrict the privilege to absent voters within the state, others to voters within the United States; while some laws make no restriction whatever. Some states restrict the reason for absence to unavoidable

(1) Distance

¹ *Bulletin No. 23*, in *Bulletins for Massachusetts Constitutional Convention*, treats the subject and gives a digest of the constitutional provisions in operation in 1918, as well as a table of statutes. P. O. Ray covers the same subject in *American Political Science Review*, Vol. VIII, pp. 442-445; Vol. XII, pp. 251-261.

- (2) The reason for absence business absences, others to illness, and some do not specify any cause. The laws vary in allowing the absent voter to vote at primaries or general elections or on initiative and referendum propositions. Most states require the absent voter to make application to the officers in charge of the election of his district a certain time before the election. On complying with these formalities the officer mails a blank ballot to the address designated by the voter. The voter upon receiving this ballot must mark it in the presence of a notary or some designated public official and inclose the same in an official envelope and mail it to his home town in time to be received before the election. On the election day the officer who has received the ballot sends it to the voting precinct, where various provisions are made under the different laws providing for casting the ballot, subjecting it to the right of challenge, and in some states providing for a hearing in the case of challenge. Some states go so far as to allow absent voters to register by mail.
- (3) Kinds of elections
- (4) The application
- (5) The voting
- (6) Counting
- (7) Registration

Character
of laws

In some of the states the laws are very hastily and, to all appearances, carelessly prepared. In others, as Indiana, Illinois, and Minnesota, the laws are carefully framed and cover all the points mentioned above, providing both for the convenience of the voter and for security against fraud.

Reasons for
laws

The movement is a recognition of the changing economic and social conditions of the electorate. Large groups are more and more compelled to be absent for definite periods from their homes; among these classes are commercial travelers, railway employees (like conductors, trainmen, engineers, and firemen), chauffeurs, sailors, fishermen, students, artisans of certain classes. In 1915 it was estimated that nearly thirty thousand men were absent from Massachusetts on election day. Not only should these men have been given the opportunity to express their preference, but in a doubtful election their votes might have altered the result. Hardly any criticism can be urged against the system, except the possibility for fraud. But if the statutes are carefully drawn, this is reduced to a minimum.

PREFERENTIAL VOTING

In some of the early constitutions of the original states a majority vote was required for the election of officers. This is also the case in the election of the legislative representatives in many countries of Europe. The disadvantages of this plan are obvious. Where more than two candidates are competing it frequently happens that no candidate receives an absolute majority of the votes cast. In European countries and in a very few American states a second election is ordered. In 1855 Massachusetts, when abandoning the majority requirement, provided that the candidate receiving the highest number of votes should be declared elected. This avoids the difficulties and inconveniences of a second election, but may bring misrepresentation of a graver sort. Where there are more than two candidates and no one receives the actual majority of votes cast, the candidate receiving a plurality of votes may be the choice of the minority of the voters; that is, the votes may be divided between a number of candidates, and the one obtaining the highest vote may receive only a minority of the total votes cast. In other words, the majority of voters may desire some other candidate than the candidate actually chosen.

Dangers of
choice by a
plurality
vote

Preferential voting attempts to remedy the evils both of a second election and of a minority choice.¹ It is a scheme by which the voters indicate on the ballot their first, second, and other choices. If any candidate receives an absolute majority of first choices, that candidate is declared elected; if, however, no candidate receives a majority of first choices, the first and second choices are added together in order to see if anyone reaches the majority. If this fails, the third choices are then counted. Should there be a tie, that candidate is declared elected who receives the largest number of first-choice votes.

Preferential
voting

¹ See *Bulletin No. 27*, in *Bulletins for the Massachusetts Constitutional Convention*; R. M. Hull, "Preferential Voting and How it Works," in *National Municipal Review*, Vol. I, pp. 386-400; L. J. Johnson, "Preferential Voting," *ibid.* Vol. III, pp. 83-92; M. P. Porter, "Preferential Voting and the Rule of the Majority," *ibid.* Vol. III, pp. 581-585; R. L. Ashley, "Preferential Voting," in *Cyclopedia of American Government*, Vol. III, p. 633.

Extension
of preferen-
tial voting

There are various other schemes of preferential voting which have been tried, but the method is generally that just described. Up to 1917 preferential voting was in vogue in fifty-seven different cities in the United States.

PROPORTIONAL REPRESENTATION

Theory of
proportional
representa-
tion

Proportional representation should be sharply distinguished from preferential voting. Preferential voting is the attempt to insure success to the majority of the electorate by counting second and third choices; proportional representation is based upon another theory. Its advocates claim that a representative assembly, whether it be a state legislature or a municipal council, should represent not simply the majority voters but all shades of opinion; in other words, that not merely the majority party in any single locality should be represented, but that the majority party and all minority parties should be represented *in proportion* to the votes cast by the different groups.

Spread of
proportional
representa-
tion

This scheme was ardently put forward by John Stuart Mill and has been advocated in the United States since the Civil War. Certain forms were tried in Illinois and Pennsylvania in the seventies, but interest in the scheme languished. In the last decade of the nineteenth century the movement received new strength because of the awakened interest in direct legislation and a more popular control of the instruments of government. Although the scheme has been widely discussed, it has been adopted in its complete form only for the choice of city councils.¹

Methods of
proportional
representa-
tion

There are various systems of proportional representation.² The elements of the plans adopted in the United States are as follows: The voter indicates on his ballot his first, second,

¹ Ashtabula, 1915; Boulder, 1917; Kalamazoo, 1918.

² See *Bulletin No. 28*, in *Bulletins for the Massachusetts Constitutional Convention*, together with bibliography; also *Proportional Representation Review*, and "Pamphlets" published by the American Proportional Representation League, Haverford, Pennsylvania; A. N. Holcombe, *State Government*, pp. 456 et seq.; A. R. Hatton, "The Ashtabula Plan," American Proportional Representation League Pamphlet No. 6. The classical books are J. R. Commons, *Proportional Representation*, and J. H. Humphrey, *Proportional Representation: a Study in Election Methods*.

third choices, and so forth. A quota is then determined by dividing the total number of ballots cast by the number of persons to be elected, plus one. All candidates who receive the quota of first-choice ballots are declared elected. The surplus votes not needed by the candidates elected are then distributed to the other candidates according to the choices indicated on the ballots. And the process is continued until a sufficient number of candidates is declared elected. Another method, which is used in Belgium, Sweden, Finland, Switzerland, and France, is the list system. This system is based on the assumption that nominations will be made by parties, and the scheme endeavors to secure proportional party representation as well as to provide for the personal preferences of the electors. The names of the candidates for the offices to be filled are grouped under party designations. The voter marks the candidates he desires to be elected. The ballots are voted by marking a cross against one name on one list, which means two things: first, that the vote is to count in determining the number of representatives that list shall receive and, second, in securing a high place on that list for the candidate for whom the voter has voted. Each list is entitled to a number of seats proportional to the total vote of all the candidates on the list. The successful candidates on each list are determined by the number of votes each has received.

Without doubt proportional representation will secure the election of members representative of different groups. The scheme, however, strikes a severe blow at the system of party government. In Ashtabula, for example, proportional representation produced a very good picture of the racial, religious, and economic divisions of the city. Even the wets and the dries were represented. But in the choice of these councilors were not the voters influenced by some one particular issue rather than by the necessity of choosing a representative to deal with all the issues which might be presented in the city government? In other words, a "wet" or a "dry" member may satisfactorily represent his supporters on that issue, but on other or larger issues totally fail to satisfy his group. Political parties attempt to select representatives who shall

Merits and
faults of
proportional
representa-
tion

adequately represent the party on all issues. Party principles and policies are necessarily the result of compromise, and the persons chosen by the party system may frequently fail to satisfy all elements of the party. But the party system and the choice of representatives by either majority or plurality vote does represent the will of the constituency to act on certain matters.

Plan for
proportional
representa-
tion in
the United
States

In municipal government—in fact, generally in local government, of which state governments are the highest manifestations—there is evidently a place for proportional representation.' As will be seen, the political parties seldom do more in state government than to insure the election of the speaker and the distribution of the patronage. Members of state legislatures do not usually vote according to party lines. There is thus much less reason for party government in state legislatures and correspondingly many more arguments for the adoption of some system of proportional representation.

CHAPTER VI

THE INITIATIVE, REFERENDUM, AND RECALL

In the preceding chapters the political system of the state has been discussed; the organization of the electorate into parties, the actual process of voting at the elections, and the form of the ballot have been described. The electorate, however, controls the action of state governments in other ways. A most effective means is afforded by direct legislation through the initiative and referendum.¹ Some of the effects of direct legislation upon the legislature and the legislative product will be discussed in succeeding chapters. Since the use of the initiative, referendum, and recall requires action by the electorate directly at the polls, it seems advisable to discuss the operation of the initiative and referendum while dealing with the electorate. This is particularly true because all proposals for legislation, constitutional amendments, and questions of recall appear upon the ballot. Direct control over legislation and administration is obtained through the use of the political

Direct action by the electorate in the control of legislation and administration through the initiative, referendum, and recall

¹There is a large amount of material upon the initiative and referendum. An extremely clear and concise statement of the varieties of forms, together with illustrated tables and typical constitutional provisions, is to be found in G. H. Haynes, *The Initiative and Referendum*, Boston (1917). This is also published as *Bulletin No. 6*, in *Bulletins for the Massachusetts Constitutional Convention*. E. P. Oberholtzer's "The Initiative, Referendum, and Recall in America" (1911) is a standard work; the supplementary chapters covering the period from 1900 to 1910 are severely critical. D. F. Wilcox's "Government by All the People, or the Initiative, Referendum, and Recall as Instruments of Democracy" (1912), is for the most part an enthusiastic defense. A. L. Lowell, *Public Opinion and Popular Government* (1914), presents a carefully studied criticism, together with valuable tables on the operation of the initiative and referendum in Switzerland. A. N. Holcombe's "State Government in the United States" (1916), chap. xiii, contains a thoughtful and suggestive discussion and analysis. J. D. Barnett's "The Operation of the Initiative, Referendum, and Recall in Oregon" (1915) is a scholarly and valuable presentation of the Oregon system.

machinery which has just been described. Its success is partly conditioned by the laws governing the conduct of elections and the preparation of the ballot. Conversely, the addition of these questions complicates the problems of the ballot which have just been discussed.

Definitions: The initiative is a device by which a group of people may, through petition, place a measure upon the ballot. If a sufficient majority of the electorate approves this measure it becomes law. The measure may be either a statute or a constitutional amendment; it may be referred directly to the people or first to the legislature. The significant thing to note, however, is that the measure is proposed or initiated by the electorate, which also accepts or rejects it at the polls. In both cases it is the direct action of the electorate.

(1) The initiative

(2) The referendum The referendum is a device by which a measure adopted by some legislative body may be referred directly to the electorate for its approval or rejection. The common characteristic of all varieties of the referendum is that it receives final action from the electorate.

Distinction The initiative is positive. Its purpose is to obtain legislation which, there is reason to believe, the legislative bodies will not enact. The intent of the referendum is negative. It prevents the adoption of a measure until approved by the voters. The initiative acts as a spur, the referendum as a brake.

Varieties of the referendum: The referendum may be classified according to the measures for which it is used. When applied to constitutional amendments it is called the constitutional referendum; when applied to acts of the legislature it is called the statutory referendum.

(1) The constitutional referendum The constitutional referendum has been long in use in the United States. In Massachusetts it was first invoked in 1641 and was frequently used on constitutional questions during the Revolutionary period.¹ Its most effective application was in 1780 on the question of the adoption of the Massachusetts constitution. Since then the practice has been increasingly followed until almost every state refers the adoption of constitutional amendments directly to the people.²

¹See *Bulletin No. 6*, in *Bulletins for the Massachusetts Constitutional Convention*, p. 196.

²For exceptions see page 31.

The working of the constitutional referendum is familiar to all, and in general its results have been satisfactory. The measures submitted have been framed either as the work of a constitutional convention, where they were subject to debate and criticism, or by the legislatures—in some states by two successive legislatures. As a result, the measures have attracted considerable popular interest and attention. It thus has been assumed also that public opinion would be formulated upon them. This is by no means the case. Yet in 1853 the eight amendments proposed by the Massachusetts constitutional convention were rejected by a vote varying from .8 to 1.8 per cent greater than was cast for the candidates for governor on the same day. In 1855, however, six of these amendments were adopted by a vote of only from 14.4 to 14.7 per cent of the vote for governor. "In fact, of the forty-four amendments which have been adopted, sixteen have been ratified at elections where not 30 per cent of those who voted for governor had voted for or against the amendment."¹

Working of
the consti-
tutional
referendum

The statutory referendum may be defined as the submission of a measure passed by the legislature to the electorate for popular approval. There are two varieties of this: (1) The state-wide referendum. By this device a legislative measure affecting the entire state is submitted to the electorate of the entire state. (2) The local referendum. By this means questions affecting areas of local government are submitted for approval. In strict theory this is not an example of direct legislation, but rather a form of local government. The commonest way in which it was formerly used was the submission of the question whether licenses for the sale of alcoholic beverages should be granted in particular communities. It is, however, increasingly employed as a means by which municipalities may adopt or amend their charters or may determine whether legislative acts shall apply to their particular locality.

(2) The
statutory
referendum:

(a) The
state-wide
referendum

(b) The local
referendum

The referendum may also be classified as compulsory or optional. It is called compulsory when the legislature, without the intervention of the electorate, submits a question for popular

(3) The
compulsory
referendum

¹See *Bulletin No. 6*, in *Bulletins for the Massachusetts Constitutional Convention*, p. 198.

approval. All constitutional referenda are compulsory. In many state constitutions there are provisions requiring the legislature to submit for popular approval certain types of questions; for example, the increase of the debt limit, the change of the location of the state capital, and so forth.

(4) The compulsory legislative referendum

In some states the legislature may, if it sees fit, submit any law to the electorate. The courts are by no means unanimous on the question of the right of the legislature to do this without some constitutional authority; in general they have denied this right on the ground that it was a delegation of power granted to the legislature, but they have allowed the legislature to submit to the people the question of the time at which the proposed measure shall go into operation—which is practically equivalent to submitting the measure for approval. In some states, however, the constitution expressly grants this power to the legislature.

(5) The optional referendum

By means of the optional referendum the people by petition compel the legislature to submit a measure already adopted by that body to the electorate for popular approval. The optional referendum is compulsory upon the legislature, but it is optional with the people whether or not it shall be invoked. As might be expected, this form of referendum has aroused much criticism on the part of the uncompromising advocates of representative government and the opponents of direct legislation. It must be admitted, however, that the measures submitted to the people as the result of an optional referendum have aroused wider public interest and have received a larger percentage of the votes cast at the election than the measures submitted as the result of the compulsory referendum.

Varieties of the initiative:
(1) Constitutional

The initiative may be classified according to the measures to which it is applied. It is called constitutional when constitutional amendments are framed by the people and as the result of a petition are submitted to the electorate for approval or rejection. It is called a statutory initiative when a law is framed by the people and submitted to the electorate as the result of petition. The initiative may be direct or indirect.

(2) Direct

In the use of the direct initiative the proposed measure is submitted to the electorate without the intervention of any

legislative body or constitutional convention. By the indirect initiative the measure is proposed by the people and submitted to the legislature for approval. There are many varieties of this type. For example, the legislature may itself enact a competing measure and refer the two directly to the electorate. Or the legislature may amend the measure, and if the amendment satisfies a committee of the original proposers and the legislature adopts the amended measure, nothing is submitted to the electorate. In this form the indirect initiative is little more than a petition to the legislature. The indirect constitutional initiative is provided in the forty-eighth amendment to the Massachusetts constitution, adopted in 1918. According to this the proposed amendment must be accepted by at least one fourth of the members of two successive legislatures meeting in joint sessions.

(3) Indirect

It is to be noted that the initiative results in a referendum; that is, the measures proposed by the people are submitted to the electorate in a manner similar to those referred by the legislature to the people. Thus, it is possible to discuss certain features common to both the initiative and the referendum. Both the initiative and the optional referendum involve a popular petition. The initiative and all types of the referendum involve a reference to the people. Therefore, to understand the workings of the initiative and referendum it is necessary to discuss the provisions for the petition, the election, and the majorities necessary for acceptance.

Common features of the initiative

All petitions must contain the measure on which popular action is to be invoked.¹ The question arises whether these measures should appear in full or in synopsis. Most states allow measures passed by the legislature to appear under their title in brief form, on the assumption that the electorate is sufficiently familiar with them. Practically all the states, however, require the printing of the full and complete proposal of all popularly initiated measures. There is a question whether

The petition

The measure should appear on the petition

¹See W. A. Schnader, "Proper Safeguards for the Initiative and Referendum Petition," in *American Political Science Review*, Vol. X, pp. 515-531; and F. W. Coker, "Safeguarding the Petition in the Initiative and Referendum," *ibid.* pp. 541-545.

this is always helpful. It is to be feared that even intelligent people seldom read the entire measure. They are attracted by the title and informed by the newspapers. But it is certain that the signer should be informed of the nature and contents of the measure for which his signature is asked. Whether this information is properly given by the printing of a long and complicated law may well be questioned. The problem seems to be well solved by the statutes of Ohio,¹ which permit the proponents of an initiative measure to submit to the attorney-general a synopsis of the measure, which, if he approves, may be printed upon the petition together with the full text of the measure.

Who should
frame the
measure?

In many states the measure submitted on the petition may be framed according to the desires of the petitioners. By so doing the door is opened for misrepresentation, for ill-drawn measures, and for measures of ambiguous meaning; for example, in 1910 in Oregon a constitutional amendment was proposed granting the suffrage to "every citizen of the United States of twenty-one years and upwards, who shall have resided in the state during the six months immediately preceding such election. . . . It is expressly provided hereby that no citizen who is a taxpayer shall be denied the right to vote on account of sex." This measure was headed on the ballot "Women's Tax-paying Suffrage Amendment, granting to taxpayers, regardless of sex, the right of suffrage."² The title of this measure was misleading, for the substance of the law granted equal suffrage to women and men. Independently of the merits of the suffrage question, the voters of Oregon are to be commended for their rejection of such an ambiguously framed measure.

Submission
of measures
to an official
review

To prevent the submission of such measures, some states require that the initiative measures be subjected to some state officer, generally the attorney-general, whose duty it is to certify that the measure is in proper form. According to Article LXXIX of the Massachusetts constitution the attorney-general must certify that the measure is neither "affirmatively

¹General code of Ohio, Vol. II, p. 2626.

²See G. H. Haynes, "'People's Rule' in Oregon, 1910" in *Political Science Quarterly*, Vol. XXVI, pp. 32-65.

or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people within three years . . . and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent. . . ." Both the efficacy and propriety of such a provision may be questioned. It places in the hands of a single officer the power to alter or defeat the desires of a substantial group of people who wish to place their proposal before the electorate. It must be admitted, however, that there should be vested somewhere the power to prevent the circulation of petitions containing matters which, by the constitution of the state, are not subjects for the initiative. Certainly, moreover, the people should be protected against the appearance of obscure or ambiguous measures. Can this be accomplished by vesting such power in the attorney-general? The Oregon amendment already quoted was submitted to the attorney-general, and certified by him to be in proper form and to have a suitable title. It is unfair to make deductions from one case, but the experience of Oregon is surely instructive.

Practically all states require that the signers of a petition, whether to propose a measure or to compel the reference of one already adopted by the legislature, should be qualified voters. Indeed, this is an entirely reasonable restriction, hardly open to discussion. It is more difficult, however, to devise safeguards which will insure that the signers of a petition are bona-fide qualified voters and at the same time, by these very safeguards, not to prevent nor to make difficult the gathering of signatures. The merits of the various proposals are judged from two opposite points of view. To some persons the purpose of the initiative and referendum is to educate the people, so that anything which restricts or makes difficult the circulation of the petition is to be condemned. To another school the initiative and referendum are to be used sparingly, only in emergencies; thus it is proper to place restrictions around the gathering of signatures in order to be sure that only those people who are bona-fide electors and interested in the measure shall sign the petition.

Who should
sign the
petition?

Who may
circulate
the peti-
tion?

Almost all the states provide that only qualified electors shall circulate petitions. In practice this has not been found sufficient. A more stringent prohibition prevents the circulation of petitions for a compensation. In view of the experiences which certain states have had with the improper solicitation of signatures, this perhaps may be defended.¹ The state of Washington has devised a thorough method of safeguarding the signatures on petitions, which, while by no means typical of the practice of any other state, probably represents the most extreme example of regulation. The petitions may not be circulated, but are to be deposited with the registration officer of the district.² For these petitions the registration officers give receipts and are required to display in their offices placards with these words, "Initiative or Referendum Petitions May Be Signed Here." The offices are required to be open on Friday and Saturday evenings between the hours of six and nine for ninety days after the close of the legislature, or for ninety days preceding the date at which the petitions must be filed with the secretary of state. On attempting to sign a petition the applicant must answer the questions asked by the registrar of voters, and his answers must correspond to those originally given upon registration. The signature on a petition must be compared with the signature in the registrar's book. There are penal provisions making it a misdemeanor for any person to sign or to decline to sign a petition for any compensation or reward, to advertise for signatures, to solicit signatures or to pay for them, to attempt to prevent signers, or, within one hundred feet of the entrance of any registration office, to solicit or attempt to induce any person to sign or not to sign a petition.

¹The circulation of one petition in Oregon was intrusted to a Portland attorney who secured signatures at the rate of three and a half cents a name. Seven of the solicitors hired by this attorney signed in turn, on each other's petitions, names in a disguised handwriting. See *State ex rel. v. Olcott*, 62 Oregon, 277, in *American Political Science Review*, Vol. X, p. 510. In 1913 one solicitor in Ohio testified that out of the 7020 names secured by him not one was genuine (*ibid.* p. 542).

²1915 Laws of Washington, p. 186, quoted in *American Political Science Review*, Vol. X, p. 521.

The Washington law without doubt makes fraudulent signatures practically impossible. It does more: it assures the electorate that the petition is signed only by interested parties. Unfortunately, however, it does even more than this: it probably prevents many interested persons from signing a petition. One of the great difficulties which all politicians experience is that of registration and "getting out the votes." If it is difficult to get the ordinary voter, who presumably is interested in the choice of the president or governor, to come to the polls, it will be doubly difficult to get the voter to come to the office of the registrar and sign petitions. As a measure to prevent the too frequent use of the referendum and initiative the Washington law is excellent, but it may be questioned whether in the desire to prevent fraud the state has not seriously hampered the proper use of the initiative and referendum.

It is perhaps impossible to determine the proportion of fraudulent signatures upon petitions. It is true that the proportion of fraudulent signatures is greater on the petitions which have been circulated by paid canvassers. In fact, one writer asserts that all the glaring instances of fraud have been found in connection with the paid circulation of petitions and that no serious fraud has been discovered in petitions circulated by voluntary workers. The obvious conclusion would be that the paid circulation of petitions should be forbidden. But this by no means follows. It is true that for certain measures in which the public is vitally interested or for measures which appeal to certain large classes, it is easy to find volunteer canvassers, but for other measures this is more difficult. It must be remembered, moreover, that the proponents of an initiative petition are just at the beginning of their campaign and are attempting to arouse public opinion and interest. When it is realized that the signatures of 5, 8, 10, or even 25 per cent of the electorate are required for a petition, the difficulty of the task of gathering signatures is evident. It perhaps is questionable whether at that stage of the campaign it is desirable or necessary to burden the proponents of a measure with the task of gathering the signatures for their petition by means of volunteers.

Criticism

Paid solicitation of signatures

Substitu-
tion of a fee
for petition

If payment be allowed for the circulation of petitions, there is little guarantee that the signatures will represent any intelligent opinion. Therefore it has been suggested that instead of requiring the proponents of a measure to gather signatures at the expense of from three to ten cents a name, they be required to pay to the state a certain fee. One author suggests that this fee be made large enough to send information concerning the measure to every voter of the state. There is little objection to this proposal, provided the premise of allowing the payment for the gathering of signatures be admitted. Less can be said for the proposal if payment for the solicitation of signatures is prohibited. As has been said, one of the purposes of requiring a certain percentage of signatures to a petition is to prevent loading the ballot with frivolous proposals. It may well be questioned whether the payment of a fee would prevent this. It also may be suggested that the payment of a fee might prevent an enthusiastic group who lacked financial backing from getting their measure on the ballot.

Means for
determining
the validity
of the
signature

The most common provision for the determination of the validity of the signature is the requirement that the circulator of each petition shall take oath that the signers of his petition are to the best of his knowledge and belief qualified voters and have been duly informed of the contents of the petition. To conscientious canvassers this requirement may mean something, but it is to be feared that too often the canvasser pays little attention to the qualifications of the persons who sign the petition. In some states the registrars of voters are required to compare the signatures on the petition with those on the lists of registered voters. To facilitate this purpose several states prohibit the circulation of the same petitions in more than one district. The extreme requirement is found in the Washington law already described.

Number of
signatures
required :

The number of signatures required upon a petition not only varies in different states but differs with the nature of the petition.¹ An initiative petition for a constitutional amendment requires the signatures of 5 per cent of the voters in

¹ See C. O. Gardner, "Problems of Percentages in Direct Government," *American Political Science Review*, Vol. X, pp. 500-515.

South Dakota. At the other extreme the percentage required in North Dakota is 25 per cent of the voters. The more common practice, if it be possible to generalize, would fix the requirement at from 10 to 15 per cent. In sparsely settled states this requirement may not be too severe, but since the initiative and referendum are spreading into the more populous states the percentage demanded must necessarily be diminished unless the burden of collecting the signatures is made too great. In Massachusetts a constitutional amendment may be initiated by a petition signed by 25,000 qualified voters. But in Massachusetts the initiative for constitutional amendments is not direct, since the measure is referred to the legislature.

(1) For constitutional amendment

Ordinary statutes may be initiated by petitions bearing from 8 to 10 per cent of the qualified voters.¹ In Ohio a petition if signed by 3 per cent of the voters brings the bill before the general assembly, but an additional 3 per cent must be obtained in order to bring the bill before the people in case the legislature refuses to adopt it. Massachusetts and Maine adopt a fixed number of signatures instead of a percentage: Maine fixes 12,000; Massachusetts requires 20,000 signatures, but 5000 additional are required to put the petition on the ballot in case the legislature refuses to act.

(2) For petitions for statutes

Maine demands 10,000 signatures on referendum petitions. Before 1911 in no state was it more than 5 per cent. Since that date, however, the necessary percentages have increased. Ohio and Washington fix the number at 6, while in Nebraska, Nevada, and North Dakota it is 10. Like Maine, Massachusetts requires a flat number—15,000.

(3) For referendum petitions

Most of the states originally made no provisions concerning the distribution of the residence of the signers, but more recently it has seemed desirable to certain states to call for a wider expression of opinion on petitions than was ordinarily found. Thus, Montana requires that at least two fifths of the counties of the state must be represented on the petition, Missouri two thirds of the congressional districts, and North

Distribution of residence of signers

¹ See Beard and Shultz, Documents of the Initiative, Referendum and Recall, for detailed provisions in each of the various states; see also current numbers of the American Year Book.

Dakota, 10 per cent of the voters in a majority of the counties; while for the constitutional initiative Massachusetts demands that not more than one fourth of the certified signatures on any petition shall be those of the registered voters of any one county.

Submission
to the people
or the
legislature

In the case of the direct initiative, where the formalities of the petition have been fulfilled, the measure is referred directly to the people. The same is true with regard to the petition for the legislative referendum. In the case of the indirect initiative the petition is first referred to the legislature. If the legislature enacts the law proposed by the petitioners there is no reference to the people. If, however, the legislature refuses to enact the law before a certain date, reference must be made and the matter becomes a referendum. In an increasing number of states, however, the legislature is given the option of amending the proposed measure or of enacting a competing measure, both of which may be submitted to the people. Without attempting to discuss the merits of this procedure, it is obvious that different instrumentalities are being employed: the submission of the original proposal is an instance of the optional referendum and the submission of a competing measure by the legislature is an example of the use of the compulsory referendum. This method would have much to commend it if the proposals on the ballots were not already too numerous and if it were certain that the voters would discriminate and accept or reject the proposals upon their merits.

The
referendum

The referendum has been defined as a device by which the people may express their approval or disapproval of a measure. As has been seen, this measure may originate in an initiative petition and be either a statute or a constitutional amendment. The referendum, however, may also be employed for a constitutional amendment adopted by the legislature or constitutional convention, or upon a law passed by the legislature and referred to the people either by the legislature or as the result of a petition. The procedure for the initiative and referendum has this point in common—that the voters are asked to express their approval directly upon the measure at a general or special election.

As has been said, in the use of the compulsory referendum no petition is necessary. The constitution compels the people to express their approval or the legislature may choose to ask the voters to express their approval upon the proposed measure. Until this approval is given, the process of legislation is not complete. Before being ratified by the people constitutional amendments have no effect. A measure passed by the legislature and referred to the voters does not become a law until approved by them—popular approval is the final step in the legislative process of this particular kind. This is not true in the case of the optional referendum. When that is used the legislative process is complete if the measure has been passed by the legislature and signed by the governor. Normally such an act is a law. How, then, can the optional referendum be made effective? In most states which have adopted the referendum a provision exists declaring that no law passed by the legislature shall go into effect until a certain time has elapsed. This delay is generally sixty or ninety days, a period sufficiently long for the people to become cognizant of the law and for interested parties to circulate a petition for its reference to the electorate. At the end of the designated period the law becomes effective unless a petition for a referendum has been duly signed and filed with the proper officials.¹ The effect of such a petition is to postpone operation of the law until approved by the electorate.

The effect
of a peti-
tion for
referendum

It is obvious that occasions may arise in which such a delay would be disastrous for the state. To subject every possible law, first to a suspension of three months and then to the possibility of further postponement until the next regular election, would be to tie the hands of the legislature and prevent its taking action in case of a crisis. To avoid this situation the state constitutions have followed different methods.

Limitations
on the
referendum:

In some states the legislature is allowed to declare that an emergency exists. Thus, in South Dakota the legislature may declare the measure an emergency measure if it "be necessary for the immediate preservation of the public peace, health, or

(1) Emer-
gency
legislation

¹ The legislature, however, may declare that the law becomes effective at some date even later than that designated by the constitution.

safety, support of the state government or its existing institutions." Similar provisions are found in the constitutions of other states.¹ Missouri leaves the matter entirely to the legislature, which may declare any act an emergency act; Michigan makes all appropriation acts emergency legislation; while in the other states provisions similar to the South Dakota clause are found.

[Criticism] The difficulty with the South Dakota provision is, first, that there is no substantial agreement or standard by which it may be determined whether a measure is for the health, safety, or preservation of the public peace. Thus, in April, 1920, the Massachusetts legislature passed under the emergency clause a bill legalizing amateur Sunday baseball. By the utilization of the emergency clause it was possible for cities accepting the act to allow baseball teams to play during the summer months instead of postponing the season until 1921. That this was a proper use of the emergency provision few will admit. A second objection is that even if there were a consensus of opinion as to what constitutes an emergency, the legislature might abuse this. So in South Dakota, between the years 1899 and 1917, the legislature passed 2573 acts, and the emergency clause was attached to 40 per cent of these. It should be added, however, that in 1915 the supreme court of South Dakota decided that the emergency clause cannot defeat a referendum unless an actual emergency exists, as defined by the constitution.²

[Increased
majority
necessary
for an
emergency
declaration]

Another method of limiting the power of the legislature to declare an emergency is to require an unusual majority in the legislature for such a declaration. In practically every state adopting the referendum a majority of two thirds of the members elected to each house is required for such a declaration. Arizona, California, and Maine allow the legislature to declare an emergency with a two-thirds majority, but this does not prevent the referendum's being invoked. A law passed under

¹ See Index Digest of State Constitutions, 1915, also Bulletins for the Massachusetts Constitutional Convention, Vol. I, pp. 204, 205.

² Bulletins for the Massachusetts Constitutional Convention, Vol. I, pp. 203-204.

the emergency act goes into effect at once, although it may be repealed by a referendum at a subsequent election.

All the states except certain laws from the operation of the referendum. In general, all laws for the immediate preservation of public peace, health, or safety or for the support of the state government and institutions¹ are excluded from the operation of the referendum. Massachusetts goes further and excludes laws relating to religion, the courts, the judges, and also laws the operation of which is restricted to a single political subdivision.² In addition, Massachusetts, in common with several other states, excludes appropriations for the current or ordinary expenses.³ The method adopted in California has much to commend it. Here the legislature may declare by a two-thirds vote of the members elected in each house that a measure is an emergency measure. Nevertheless this power is restricted and does not apply to measures creating or abolishing an office, changing any salary, granting any franchise or special privilege, or creating any vested right or privilege. No one of these shall be declared an "urgency measure."

(2) Excep-
tion of
certain
measures
from the
process of
the refer-
endum

In all states adopting the initiative and referendum the measures so proposed are to be submitted to the people at the next regular election provided such occurs not less than thirty or sixty days after the filing of the petition, the object being to allow a sufficient time in which the voters may familiarize themselves with the question. In California, however, the governor may order a special election, at his discretion; and in Maine, on petition, he may also do that, provided the general election does not take place within six months.

Submission
of measures
to the
electors

Certain advocates of direct legislation argue that the measures should always be considered at a special election, where their merits might be appreciated apart from the issues of an ordinary campaign. There are two objections to this proposal. In the first place it is to be doubted whether a sufficiently large

Considera-
tions of
measures at
a special
election

¹ See Index Digest of State Constitutions, pp. 781-782.

² Article XLVIII, The Referendum, III, Sect. ii.

³ Colorado, Montana, New Mexico. Michigan excludes from the referendum bills to meet deficiencies in state funds.

proportion of the electorate would ordinarily attend a special election at which only referenda propositions were considered. As a result the measures would be adopted or rejected by a minority of the voters.¹ On the other hand, if the state required a rather high percentage of the electorate to vote at the election, the measures might fail because of nonattendance by such a proportion of the voters.

Consider-
ation of
measures at
a general
election

There are almost equal objections to the consideration of measures for direct legislation at a general election. As has been seen, the ordinary ballots are already too long and in many states, where the initiative and referendum are frequently invoked, they are grossly overloaded. The voter is confused; he frequently is subject to what may be called "electoral fatigue" and thus fails to mark many of the proposals upon the ballot. On the other hand, when he is confronted by a large number of proposals the voter may unthinkingly mark them all indiscriminately Yes or No. In either case the election does not give a fair test of public opinion.

Biennial
elections
and direct
legislation

With the growth of the movement for biennial elections and the increasing use of direct legislation a new problem appears. The laws passed by the legislature may be suspended for two years by the process of a petition for a referendum. Because of this fact the temptation to attach emergency clauses to the ordinary laws is increased. There are instances, indeed, of improper actions by particular groups in putting off the operation of a law by invoking the referendum. It would therefore seem advisable that more general provisions be made for holding special elections.

Special
ballots

To obviate the difficulty of overloading the regular ballot some states—for example, Ohio—require that the referenda propositions shall be placed upon a special ballot. This has the merit of relieving the general ballot and, at the same time, of concentrating the attention of the voter upon the special provisions on which he is voting.

In order to protect the electorate from being overburdened with deciding questions of direct legislation, certain states limit the number of propositions which may appear upon the ballot

¹See pages 121-122.

at any one time.¹ Some states prohibit placing a proposition on the ballot until the preceding one has been disposed of. This is particularly true with regard to constitutional amendments. Other states, among them Massachusetts and Nebraska, prohibit the submission of a measure which has been submitted to the people within the last three years.

Limitations on number and frequency of measures submitted

In general, two methods are used for determining the vote necessary for adoption of a measure. All that is necessary in some states is a majority of the votes cast upon the proposition.² Other states require a favorable majority of those voting at the election. The first requirement is hardly sufficient; experience shows that the proposals for direct legislation attract a much smaller vote than the vote for the election of officers. Still, as Professor Holcombe has pointed out,³ a distinction must be made between the compulsory and the optional referendum. A far larger proportion of the electorate expresses its opinion under the optional than under the compulsory referendum. This requirement frequently prevents the adoption of measures for which a substantial number of people have voted. Thus, in Arkansas in 1916 the total vote for the candidates at the election was 167,505; "Good Road Tax" measure was approved by 82,503 to 66,150,—a majority of 16,353,—yet it failed to pass because the favoring vote was not a majority of those who voted at the election.⁴

Vote necessary for adoption:

(1) A majority voting thereon

(2) A majority voting at the election

A variant of the provision requiring simply a majority of those voting thereon is found in the Massachusetts amendment of 1918,⁵ where a constitutional amendment proposed by the initiative requires a majority of those voting thereon, provided such is 30 per cent of the total number of ballots cast at the election. The same amendment⁶ provides that an act

(3) A majority of those voting thereon, provided certain other requirements are fulfilled

¹ Bulletins for the Massachusetts Constitutional Convention, Vol. I, pp. 217-218.

² C. O. Gardner, "Problems of Percentages in Direct Government," in *American Political Science Review*, Vol. X, pp. 500-515.

³ State Government in the United States, pp. 406-407, 412.

⁴ Bulletins for the Massachusetts Constitutional Convention, Vol. I, p. 216.

⁵ Article XLVIII, The Initiative, IV, Sect. v.

⁶ The Referendum, III, Sect. iii.

of the legislature shall not be rejected if the negative vote is less than 30 per cent of the total number of ballots cast at the election. A similar provision requiring a negative vote of 40 per cent is found in the constitution of New Mexico. There is much to be said in favor of this method of determining the majority necessary for adoption or rejection of a measure. It avoids the difficult requirement of a majority voting at the election, but at the same time insures a more substantial number of votes than the requirement of a majority of those voting upon the measure.

Veto of the
governor

After a measure has been approved at the popular election the question arises whether this is subject to the executive veto. Fifteen states answer this in the negative. If the theory on which the initiative and referendum are based is accepted, it is difficult to see why the executive should be allowed to thwart such an expression of the popular will. No state ever allowed the governor to veto a constitutional amendment adopted by popular vote, and it seems as if the referendum as applied to statutes should have an equal protection against executive interference. The control of the governor through his veto is political; the action of the popular referendum is a political action of an even more decisive sort. Statutes adopted by the referendum are of course open to judicial interpretation and may be declared unconstitutional by the court.

Legislative
amendment
or repeal
of direct
legislation

There is little consistency among the states in dealing with the matter of the appropriateness of legislative amendment to direct legislation. Oklahoma declares that the initiative and referendum shall not deprive the legislature of the right to repeal or pass any law. At the other extreme, Arizona exempts initiative or referendum measures, approved by the electors, from the operation of the executive veto and legislative amendment. Washington gives a two years' immunity to acts approved by the majority of the electors voting thereon, and Nevada three years to measures proposed by the initiative. California and Michigan provide that no law adopted under the initiative may be amended.¹

¹ In Michigan no law so adopted may be repealed (Bulletins for the Massachusetts Constitutional Convention, Vol. I, pp. 196, 217-218).

The effect of direct legislation upon the legislature and its power will be considered in a later chapter. In the present chapter the topics which should be discussed deal with the electorate, the political parties, and the ballot.

The effect of the initiative and referendum:

One of the theoretical justifications for direct legislation is its effect upon the electorate. It is held to have an educative value, and it is claimed that if the people have the opportunity to express directly their opinions upon measures, they will inform themselves concerning the merits of these measures and will take an intelligent interest in the government. It is claimed, also, that much misgovernment is due to the listlessness and ignorance of the electorate. Once give the people, it is said, the opportunity to act directly and their interest will prevent many of the unfortunate results of representative government. These assertions rest upon the theory that the people will take interest in the initiative and referendum. This is directly denied by some, and experience in some states supports this denial. Before accepting it in full, however, an analysis should be made of the apparent interest expressed by the people on the various kinds of referenda and the character of the measures submitted to them. It has been shown¹ that much more interest is excited by the optional than by the compulsory referendum. The poor record which many of the Eastern states make has been due largely to the fact that in the past the electorate had experienced only the compulsory referendum. The only measures which were submitted to it were constitutional amendments or measures on which the legislature did not care to express a definite opinion. In states where the optional referendum exists much more interest is aroused. The interest, moreover, varies with the character of measures which are submitted to the people. No lack of interest is found on large measures, such as licensing the sale of intoxicants. In the same manner the people are eager to express their opinion about appropriations, and not always wisely as regards salaries and compensations. On the whole, it may be affirmed safely that in those states where the optional referendum has been in use for a decade the electorate is

(1) Upon the electorate

¹A. N. Holcombe, *State Government in the United States*, pp. 404-407.

keenly interested in the problems presented to it. That it always decides wisely is, of course, a question of opinion, but that it generally obtains its desires is a matter beyond dispute. The danger lies in the possibility that the electorate, conscious of its power, will use the initiative and referendum too frequently, and in some states this has doubtless happened. In justification, however, it should be said that in those states where the use of the referendum or the initiative has apparently been excessive the legislatures were not truly representative of the people, but were too often controlled by groups or machines. Direct legislation certainly gave the people of California the control of their state government. As the novelty of the initiative and referendum has worn off, its use for frivolous or novel matters has declined. An exception might be found in South Dakota, where the Nonpartisan League, through the initiative and referendum, succeeded in putting into effect some of the radical features of its program.

(2) On
political
parties

Theoretically, the effect of direct legislation on political parties should be bad. A political party, filling its proper function, ought to be held responsible for the legislation it supports. Anything which weakens this responsibility and allows the political party to shift its burden directly to the unorganized electorate is unfortunate. Practically, however, political parties are not very greatly concerned over general measures of state legislation. As will be seen, there is less party voting in state legislatures than in Congress, because in state politics political parties are more concerned over the election or selection of officers and the appropriation of money than over the general course of legislation. Exceptions, of course, are numerous. Since, then, political parties too frequently escape the responsibility for legislation, the initiative and referendum cannot be held responsible for any of their weaknesses. Direct initiative and legislative referendum positively enable the electorate to obtain the enactment of measures which political parties might refuse.

(3) On the
machine

The initiative and referendum give the electorate the opportunity to break the power of the machine. As has been seen, the majority of the electorate votes a partisan ticket, and in

that lies the strength of the machine. If the machine controls the individual legislators, as it frequently does, there is little hope that the electorate can obtain the measures it desires in opposition to the machine. The initiative and referendum are nonpartisan agencies. The measures appear in no party column, with no party symbol, and voting on them can hardly be controlled. The machine is less able to manage its adherents or the mass of the electorate on these measures than it is in the choice of officers. In more than one state the initiative and referendum have been successfully invoked to break the power of the machine.

The effect of the initiative and referendum on the ballot is (4) On the
unfortunate. In almost every state the ballots are already too ballot
long and make too great a demand upon the electorate. Very often the very size of the ballot causes the voter to neglect to express an opinion upon the referenda. This may be the explanation of the smallness of the vote in some states. One method of overcoming this evil is to provide a special ballot for the referenda; another is to submit the referenda to the voters at a special election. The disadvantages of the latter plan have already been discussed; the plan of a special ballot has the advantage of attracting the voter's attention to the proposals and of shortening the ballot for the choice of officers, but it has the disadvantage of complicating the actual process of casting and counting the ballots.

In spite of all criticism, both of the theory of direct legisla- Summary
tion and of the details of any particular system, the initiative and referendum have probably become a permanent part of the political machinery of the states. No state which has adopted these instruments has ever abolished them, and more and more states are adopting them. The system, in order to work satisfactorily, should provide (1) that the measures should be framed fairly and without ambiguity; (2) that they should be sponsored by an interested group of the electorate; (3) that they should be adopted only upon the approval not of a mere majority of those voting thereon, but of a considerable proportion of the electorate; (4) that the decisions of the initiative and referendum should not be subject to executive veto. The

preceding pages have attempted to show how these principles have been established in different states. The variations described show that there is no consensus of opinion as to the best method of attaining the desired ends.

THE RECALL

The recall

The recall is a device by which a public officer who is unsatisfactory to the people who elected him may be removed from office before the expiration of his term.¹ The recall is not new in the constitutional history of the United States—it was contained in the Articles of Confederation. In its modern form it was first introduced into municipal government in the charter of Los Angeles in 1903, and is now found in an increasing number of city charters.² As applied to state government, it made its initial appearance in Oregon in 1908 and is found in nine other states in some form or other.³

How the recall is invoked

Like the initiative and referendum, the recall originates with a petition. This petition, which is addressed to the governor, may, as the Arizona form provides, bluntly make a demand: "Sir: We, the qualified electors of the electoral district from which ——— was elected, demand his recall." Or it may, in more suave terms, request the governor to proclaim a special election for voting upon the question of whether or not an officer should be recalled.

Number of signatures necessary to invoke the recall

Eight of the states require that the petition should be signed by 25 per cent, one by 10 per cent,⁴ and one by 12 per cent.⁵ There is no uniformity, however, as to what this percentage should be reckoned upon. Kansas takes as a base the electors of the state; Michigan, the number of votes cast for governor;

¹See Bulletins for the Massachusetts Constitutional Convention, Vol. II, pp. 287-301. This contains a brief bibliography. As in the case of the initiative and referendum there is a large amount of literature on this subject. Attention should be directed to W. B. Munro (ed.), *The Initiative, Referendum, and Recall*.

²See pages 408, 439, 448.

³Arizona, California, Colorado, Idaho, Kansas, Louisiana, Michigan, Nevada, Oregon, Washington. *American Year Book*, 1919.

⁴Kansas.

⁵California.

Oregon and Idaho, the number of votes cast for all candidates for justice of the supreme court in the last preceding election; four states take the number of votes cast at the preceding election for the office held by the incumbent whose removal is desired. This is the most logical base to assume.

If a sufficient number of names have been secured for the petition the officer must be informed that a recall has been initiated against him. At the election the petitioners are required to state the reasons for demanding the recall in a paragraph of one hundred or two hundred words in length, and the incumbent may be given a similar privilege of defense. The latter, however, has another course open to him—he may voluntarily resign his office rather than stand the trial of an election. In this case the recall election amounts to nothing more than an election to fill a vacancy. California submits to the voters, on the same ballot with the name of the new candidate for the office under dispute, the question, Shall the incumbent be recalled? If a majority of those voting are in favor of this question, the votes for the candidate or candidates for the office which the incumbent occupies are counted and the candidate receiving the plurality is declared elected.

Operation
of the recall

Most of the states which have introduced the recall extend it to every elective officer. Idaho, Louisiana, Michigan, and Washington except judges, while Arizona provides for "an advisory recall for United States officers, whether elected or appointed."

What
officers may
be recalled

By statute Arizona allows candidates for federal offices the privilege of signing one of two statements. The first statement reads, "If elected to the office of —, I shall deem myself responsible to the people, and under obligation to them to resign immediately, if so requested by an advisory vote." The second statement declares that the candidate shall not deem himself obliged so to resign. In the preparation of the official ballot the secretary of state is directed to place under the candidate's name, on the ballot, "Pledged to advisory recall," or "Refuses to pledge to advisory recall," or "Silent as to advisory recall." A similar device is provided for recommendations to the president for appointive federal officers.

The
advisory
recall of
federal
officers

Frequency
of the use
of the recall

Until 1921 the recall was not used for any state officer chosen by the electorate at large. Its ordinary use was in municipal affairs where mayors, attorneys, and municipal judges were subject to recall petitions. The effect of the recall upon the judiciary and the use of the recall in commission and city-manager governments will be discussed in subsequent chapters.

The recall
in North
Dakota

In 1921, however, a state-wide recall was attempted in North Dakota. This was invoked by the opponents of the Non-Partisan League, which had been successful at the previous election. In carrying out their program the Non-Partisan League extended the functions of state activities into fields which were formerly preserved for private enterprise. Particularly was this true in banking. The accusation was brought against some of the officials chosen by the Non-Partisan League that they were socialistic and the financial success of some of their enterprises was dubious. Consequently the opponents of the league successfully invoked the recall against the governor, attorney-general, and commissioner of agriculture and labor, and succeeded in electing their candidates.

PART III

ORGANIZATION AND FUNCTIONS OF
STATE GOVERNMENT

CHAPTER VII

THE STATE GOVERNOR

The executive department in state governments is decentralized. This is in sharp contrast to the executive department of the national government and the usual condition in municipal government. In part this may be explained on historical grounds. When the American states achieved their independence the reaction against the tyranny of Great Britain, which, as they knew it, was a tyranny of the executive, led them to establish legislative supremacy. The provincial governor¹ in the American colonies was the instrument of British oppression. The colonial assemblies had been the means by which British oppression had been resisted. Thus the early constitutions of every American state exalted the power of the legislature and limited the executive department. Roughly it may be said that until the first third of the nineteenth century legislative supremacy was recognized in most of the American states. Three influences brought about a change of policy. In the first place, the state legislatures proved inefficient and in some instances corrupt. In the second place, with the movement toward democracy and the election of the governor by the people, that official came to represent the entire electorate of the state far better than a group of representatives, each chosen from small districts and too often selfishly attached to local interests. A third influence was the extension of the functions of the state into new fields, which demanded the creation of new executive offices. This began at the time when the democratic movement was strong and the distrust of the legislature almost equally strong. As a result many of the new executive officers were chosen directly by the people.

¹The most exhaustive treatment of the provincial governor is in E. B. Greene's "The Provincial Governor in the English Colonies of North America."

The combination of these three tendencies gave to most American states at the end of the nineteenth century a plural executive department composed of numerous officials, many of whom, being directly chosen by the electorate, were on a par as far as authority went, and responsible not to any one executive official but to the electorate. At the close of the nineteenth century came a movement to integrate the executive department and to vest in the governor the appointment and thus the direction of a larger number of officials. The movement was undertaken in the desire to increase efficiency and was perhaps hastened by the success which had been brought about by concentration of executive power in municipal affairs.

The
provincial
governor

The state governorship was the first executive position created by the states even before they actually achieved their independence. They had in mind an office which they desired not to perpetuate but to avoid. The provincial governor had held office for no fixed term, but served during pleasure.¹ He had had the power to summon, prorogue, and dissolve the colonial legislatures. He had had the absolute power of veto and a large appointing power. He had been commander in chief of the colonial militia, and in many colonies had exercised equity and admiralty jurisdiction. He and his council, which, as a rule, he nominated, had been the highest court of appeal in the colonies.² His powers were so wide and his influence so great that had Great Britain appointed abler men as provincial governors and supported them more consistently, the task of achieving independence would have been far more difficult.

The state
governor

The early state constitutions generally provided that the governor should be chosen by the legislature.³ This, however,

¹ In Connecticut and Rhode Island the governor was chosen by the legislature and had little power. In the proprietary colonies he was appointed by the proprietor.

² In Connecticut, Massachusetts, and Rhode Island the council was elected.

³ J. M. Mathews, *Principles of American State Administration*. Chaps. ii-v deal with the state governor and his powers. See also J. H. Finley and J. F. Sanderson, *The American Executive and Executive Methods*, chaps. iv-xii; also A. N. Holcombe, *State Government in the United States*, chap. v, and J. A. Fairlie, "The State Governor," in *Michigan Law Review*, Vol. X, pp. 370-383, 458-475.

tended to make him a mere agent of the legislature rather Election than an independent executive, and violated that principle of separation of departments which was more or less consciously held by the states. Today the governor in forty-seven states is chosen by direct popular vote.¹ It should be remembered that although elected by the people the choice of the governor is the result of action by the party system. He is nominated in conventions or direct primaries and elected at the polls. In most states a plurality of votes is sufficient for election. In three states a majority is required.² In case no candidate receives this majority the election is thrown into the legislature. In all states where two candidates receive an equal number of votes the legislature by different processes selects the governor.

In New Jersey the governor is elected for three years. In Term twenty-five states, including all the New England states, New York, Ohio, Wisconsin, Kansas, and New Mexico, the term is two years. In twenty-two states, including Pennsylvania, most of the Southern states, Indiana, Illinois, and the Pacific states, the term is four years. The general tendency has been to increase the length of the governor's service in order that he may carry out the policies for which he stood on election.

All states provide for the removal of the governor by im- Removal: peachment.³ This, according to the ruling of the New York (1) By im- court, is a judicial process. The governor may be impeached peachment by the lower house of the legislature and tried by the senate. In general, it requires a vote of two thirds of the senate to convict and remove the governor.

In ten states the governor may be removed by a recall.⁴ (2) By Should this happen the candidate chosen by the electors fills recall out the unexpired term of the governor.

¹ In Mississippi he is chosen by the majority of the popular and the electoral vote. The electoral vote is obtained by giving to the candidate receiving the highest vote in each county as many electoral votes as the county has representatives. Constitution of Mississippi, Article V, Sect. 140.

² Georgia, Mississippi, Vermont.

³ Except Oregon.

⁴ See page 126.

Filling of
vacancies

About two thirds of the states provide for a lieutenant governor chosen in the same way and thus generally from the same party as the governor. In some states he has few functions other than those of an heir apparent; in others he may preside over the senate; and he frequently serves ex officio on various commissions.¹ In case of the death, resignation, or removal of the governor by impeachment the lieutenant governor succeeds to office and the same party policy is continued. Where the governor, however, is removed by recall (up to 1921 no governor has been so removed), a new governor is elected for the remainder of the term.

Compensa-
tion of the
governor

The salaries of the governors are small. Illinois pays \$12,000; California, Massachusetts, New York, New Jersey, Ohio, and Pennsylvania, \$10,000; Nebraska, \$7500. The lowest salary is \$2500. Although the powers and governmental functions of the governor are far greater, they are not so well paid as the mayors of large cities.

The powers
of the
governor

The powers of the governor may be classified as legal and political. The legal powers include those which are granted directly by the constitution, those which are inherent in the executive office, and those which are granted him by acts of the legislature. The political powers of the governor have their basis in the political system of the state—in the fact that the governor is the choice of a party system and frequently the most influential person in the party. The governor may use many of his constitutional powers for political purposes, and very frequently he uses his political influence for purposes not contemplated by the constitution. Particularly is this true in his dealings with the legislature. The powers of the governor may be further classified as legislative and executive. The legislative functions include the right to submit messages and the power of veto; the executive functions cover the field of appointment, pardon, supervision of administration, and the military power.

The legisla-
tive power
of the
governor:

In the early constitutions of the states the governors had practically no legislative power. Starting from what was almost a negation of such power, the governor has become virtually

¹ See *American Political Science Review*, Vol. XI, p. 88.

a third house of the legislature. He has done this through the addition of constitutional powers and through the use of his political power.

The regular sessions of the legislature are fixed by the constitution. But with the decreasing frequency of such regular sessions has come the necessity of summoning special sessions. This power is vested in the governor. An interesting question arises concerning the power of the legislature after it is summoned in a special session. In some states the legislature is prohibited from taking action on any measures except those designated by the governor in the proclamation summoning a special session. This prohibition has at times compelled the governor to summon another special session, and in 1912 there were in Illinois two special sessions of the legislature simultaneously in session.¹ A better practice is to limit the legislature to action on such matters as shall be contained in the governor's call or submitted to it by him during the session.²

(1) Power to summon the legislature

The provincial governor had the power to dissolve the colonial assemblies and to order a new election. No state governor may do this. The time of the assembling of the legislature is fixed by the state constitution and in some states the length of the sessions also. Where this duration is not so determined, the legislature and not the governor decides as to adjournment. In some states, in case of emergency, like an epidemic or an uprising, the governor may convene the legislature at some other place than the state capital, but this power can be exercised only in the recess of the legislature. When the legislature assembles the governor's action in proroguing it to another place may be revised.

(2) Adjournment, prorogation, dissolution

Logically, the governor's legislative influence begins with his message. In every state he has power to submit by message matters for the consideration of the legislature. Generally these messages are in the nature of recommendations, and

(3) Introduction of measures; the governor's message

¹In 1913 a special session of the New York legislature impeached Governor Sulzer. This, the New York court held, was a judicial, not a legislative, performance.

²This is the practice in Florida, Mississippi, Montana, Nevada, and Utah.

rarely does the governor by a message introduce an "administration bill." There is, however, nothing to prevent him from so doing, and in such case that portion of his message would be referred to the proper committee. The governor's messages, moreover, may contain exhortations to the legislature urging them to follow a certain course or adopt a specified measure. The message, moreover, may constitute a threat that a measure, if passed in a certain form, will be vetoed. The effectiveness of the governor's message is measured not so much by his constitutional power as by his political influence. Where a governor belongs to the majority party of the legislature his message is generally obeyed. It may happen, however, that although the governor and the majority of the legislature are of the same party some other person than the governor—a leader or a boss—may have greater influence with the legislature.

(4) The governor's veto

One of the most effective instruments which the governor has in dealing with the legislature is the executive veto.¹ In the early constitutions only two states gave him this power. In the original Massachusetts constitution the governor was given a qualified veto. He returned to the legislature measures of which he disapproved. If the legislature repassed these measures by a two-thirds majority in each of the houses, the act became a law in spite of the governor's objection. In many states it was thought that this method gave too great a power to the governor. Kentucky in 1799 revised its constitution and provided that the legislature, by a simple majority of all the members elected, might pass a law contrary to or despite the objections of the governor. This method was popular during the first half of the nineteenth century, but has not been generally adopted. North Carolina is the only state which does not provide for some form of the executive veto.

In the type of veto just discussed opportunity is given for the legislature to pass the law over the governor's objection;

¹See J. A. Fairlie, *The Veto Power of the State Governor*, in *American Political Science Review*, Vol. XI, pp. 473-494; J. H. Finley and J. F. Sanderson, *The American Executive and Executive Methods*, chap. vi; A. N. Holcombe, *State Government in the United States*, pp. 327-344.

that is, his veto is not absolute. In most state constitutions the governor is required to return measures submitted to him by the legislature within a certain time—from three to ten days. However, should the measures be passed in the last days of the legislature, and the legislature be adjourned either by constitutional requirement or by its own action, the governor would have a certain time in which to examine bills and either approve or disapprove them. In case he disapproves them, the legislature not being in session, his veto would be absolute, for there would be no opportunity for legislative reconsideration.¹ It was hardly contemplated by the framers of the state constitutions that this would frequently occur. But the increase of legislative business, and in particular the hurried passage under suspension of rules of an immense number of measures in the last days of the legislature, has greatly increased the possibility and even the necessity of the governor's absolute veto. In fact, some state constitutions—for example, California and New York—allow the governor thirty days in which to consider bills and approve or disapprove them. This makes him literally a third house of the legislature, from whose decision there is no possible appeal.

The
absolute
veto after
adjourn-
ment

Originally the governor was compelled to accept or veto an entire measure. This frequently presented a serious dilemma. Parts of a measure might be good, while he might not approve of other portions. Particularly was this true with regard to appropriation bills. In addition, state legislatures sometimes follow the unfortunate practice of attaching "riders"; that is, bits of legislation not connected in subject matter, but inserted in the bill. This happens most often in the case of appropriation bills. The governor would be obliged either to accept a piece of legislation of which he did not approve or else veto an entire measure which might be perhaps an important appropriation bill. The constitutions of many states, however, provide that no bill except an appropriation bill should embrace more than one subject. This prohibition was not

The item-
veto

¹Some states—like the federal government—provide for a "pocket veto." This is where a bill passed in the last days of the session and not signed by the governor after adjournment fails to become a law.

sufficiently effective, and considerable latitude was allowed in the interpretation of what should constitute a single subject. Moreover, appropriation bills were especially excepted from this prohibition. Consequently the majority of the states have adopted what is known as the item-veto, applicable to appropriation bills, and three of these states allow the governor to approve of sections of any bill.¹ Several states go even further and allow the governor to reduce the items voted by the legislature in an appropriation bill. In this respect we find the governor's legislative power reaching its highest point. He may not only disapprove of legislative action but may substitute his own discretion for that of the legislature.

The extent and influence of the governor's veto power

The veto power is widely used, but not evenly distributed. In 1915 over a thousand bills or parts of bills failed to become law because of the governors' veto. In New York, in 1915, about 23 per cent of the measures or parts of measures passed were successfully vetoed by the governor, in California 22 per cent, in Pennsylvania 21 per cent. In the same year, however, not a single bill was vetoed by the governor of Rhode Island.² The vetoes were overwhelmingly successful. In the particular year under consideration only 2 per cent of the governor's vetoes were overridden. The effectiveness of the governor's veto is, of course, vastly increased when the veto is an absolute one, as it is in the case of measures submitted to him at the close of the session of the legislature.

Popular opinion regarding the veto

Very little criticism is aimed at state governors for their use of the veto. In fact, it is frequently the case that a governor's reputation rests upon his vetoes. Not only does he often check unwise legislation and extravagant appropriations, but he performs for the legislature duties which, either through lack of time or ability, they do not perform for themselves. Cases are not wanting where the legislatures have passed duplicate bills, bills in conflict with one another, or defectively drawn bills, relying upon the careful review given by the executive to correct their errors.

¹ South Carolina, Virginia, and Washington. For a discussion of this see J. M. Mathews, *Principles of American State Administration*, pp. 61-62.

² A. N. Holcombe, *State Government in the United States*, pp. 327-331.

The veto is the strongest weapon in the governor's political arsenal. He may use it to punish too independent members of his party and to consolidate his own personal influence. This is especially true where the veto exists for separate items in appropriation measures. The governor may consider not simply the merits of a particular appropriation but may weigh the loyalty of the member desiring the appropriation and decide whether or not his conduct deserves reward. Through the threat of a veto the governor may compel the legislature to revise or amend a proposal.

Effect of
the veto
upon the
governor's
position

The executive power of the state governor includes the power of appointment and removal, the supervision of administration, the enforcement of the laws, the military power, and the power of pardon. As has been said, all this authority is not concentrated in the hands of the governor but is everywhere shared by the governor with other officials or bodies. The Constitution of the United States declares that the executive power shall "be vested in a president," thereby centralizing the executive authority. Although similar words are found in some state constitutions the tendencies are otherwise. Recognizing this, the majority of the state constitutions provide that "the supreme [or chief] executive power shall be vested in a governor." The word "supreme" is in the nature of a limitation and a recognition of the fact that there are other bodies exercising the executive function. State governors again are unlike the president of the United States in that they have very little inherent executive authority. The executive powers of the state governors are generally granted explicitly either by the constitution or by statute, and these are seldom inherent or implied powers.

The execu-
tive power
of the
governor:

In the national government all officers are appointed by the president of the United States or by subordinates whom he appoints. This is not so in the states. Originally the governor's power of appointment was very slight, for practically all the state officials were chosen by the legislature. Two tendencies may be observed. First, this power of selection was taken from the legislature and vested directly in the people. Throughout the greater part of the nineteenth century this

(1) Power of
appoint-
ment

tendency was given full sway, and most of the state officers were popularly elected. Only subordinate officials were appointed. In the last decades of the nineteenth century, however, it was seen that popular election was not a satisfactory method for selecting officials, and the appointment of most of the new officers demanded by the increase and extension of governmental activities was vested in the governor. In addition, the appointment of a few of the older officers was transferred also to the governor. Although these officers became appointive, the governor was not given a free hand in his appointments. Not until the twentieth century was there a very widespread, successful movement to vest in the governor alone the appointment of state officials.

Limitations
on the
governor's
power of ap-
pointment:
(a) Confir-
mation of
council or
senate

Many limitations on the governor's power of appointment may be observed. In some states—Massachusetts, for example—the appointing power is checked by an executive council. This is an anomaly inherited from colonial days. More often the upper chamber shares with the governor the appointing power, and the governor—like the president of the United States—nominates, while the senate confirms the ap-

(b) Compo-
sition of
commissions

[Gradual
renewal]

pointment. A second limitation upon the governor's power of appointment is found in the composition of the various boards and commissions which he may select. These limitations may be in the nature of gradual renewal; that is, allowing a governor in a single term to appoint only a portion of the board.

[Bipartisan
boards]

Certain boards must be representative of more than one political party, and the governor's power is thus limited. In some

[Residence]

instances there are limitations of residence, which require, for example, that a board should represent various sections of the

[Technical
qualifica-
tions]

state. In some other cases, where technical qualifications are necessary, these serve as a limitation upon the governor's power. It is difficult, however, to devise a restriction which will be effective and at the same time not interfere with the governor's power to appoint and the senate's power to approve.

[Ex-officio
members]

Another restriction is found in the composition of ex-officio boards. In these, although the governor may appoint certain members of the board, other members are placed upon the board as the result of holding special offices, to which they are

generally elected by the electorate. A more important limitation on the governor's appointing power lies in the civil-service laws of the various states. [Civil-service regulations]

The theory of the civil-service laws is to insure that only qualified persons shall be appointed to state offices. With this end in view a commission is established to examine applicants for state positions and to certify their fitness to the appointing authority. The civil-service commission is chosen in various ways. In some states it is appointed directly by the governor. Where this is done and the appointments are for no fixed term the commissioners are generally amenable to executive influence. Where the commissioners are appointed by the governor with the consent of some other body and are not removable, less executive influence may be exerted. Much depends, however, on the character and independence of the commission. Civil-service laws

The civil-service commission

It is the duty of the commission to prepare examinations suitable for applicants for any executive position covered by the law. These examinations are taken by the candidates and are rated by the examiners. The examinations vary greatly in character from time to time. They are too often technical and test the candidate's ability to prepare for and pass an examination rather than his capacity for executive work. Even this type of examination, however, if honestly marked, may prevent the appointment of the most inefficient political appointees, although it will not guarantee the selection of able officials. The work of the commissions is negative rather than positive. Another criticism of the civil-service rules is found in the numerous exemptions which the legislatures make. These exemptions may apply either to the nature of the position—that is, technical or confidential positions may be exempt—or to the character of the candidate. For example, veterans of the Civil War or subsequent wars may be exempted either completely or in part. These exemptions do much to break down the competitive character of the examination. Work of the commission

It is a mistake to suppose that a position obtained through appointment according to the civil-service rules is permanent. Removals are allowable. In fact, however, the civil-service Removals under the civil-service rule

rules may be criticized in that they make removals too difficult. In most states, in order to remove an officer appointed under the civil-service rules, notice must be given, a hearing must be held, and cause for removal must be proved. In some states the courts have decided that the cause which alone will justify a removal must be such as can be proved in a court of law. Therefore it is extremely difficult to secure removal for any cause less serious than a crime. The result is that some states afford the spectacle of the courts reinstating inefficient and negligent officials to the service. In some states offices held under the civil service have almost life tenure.

Results of
the civil
service

While the civil-service examinations have perhaps prevented the selection of the worst kind of political appointees, they have not given the best type of public service. State administrative offices are too often filled with persons who have gained their positions as the result of a successful examination and who hold these positions in spite of increasing inefficiency. The systems too generally do not provide for removals or sufficiently rapid promotions on account of merit. The officials so appointed tend to regard their positions as vested rights. In spite of these criticisms, however, the civil-service system, as applied to the states, has put an end to some of the greatest scandals which formerly characterized state political life.

(2) Power of
removal

The president of the United States may remove all officers he appoints except the judges. No such wide power is given to the state governor. Wherever his power of appointment is shared with another body the consent of this body must usually be obtained for removal. This is a most serious limitation upon the power of the governor to direct and control state administration. In addition, it is generally held that where the governor appoints an officer for a definite term either with or without the consent of some other body, that officer may not be removed except by impeachment unless other methods are provided by law. It is almost needless to point out that the officers elected directly by the people or by the legislature are generally irremovable by the governor.¹ Such a condition of affairs makes it almost impossible for the governor effectively

¹ See pages 132, 154, 162.

to control the administrative policy of the state. This has long been recognized, and attempts more or less successful have been made to widen the governor's power of removal. In some states¹ he may remove all officers appointed by him and even elective officers "on the address of two thirds of the senate." The state legislatures have also extended the governor's power of removal. This is entirely possible in the case of officers holding positions created by the legislature if the legislature shall authorize such removals.²

Two classes of officers who execute the state laws are withdrawn from the power of the governor to appoint and remove. The first are the judicial officials of the state—the judges and district or county attorneys. These are almost everywhere chosen by direct election.³ In the second class are the local officers—the county commissioners or supervisors, the sheriffs, the mayors of the cities, and the heads of the police department, together with many town and municipal officers charged with the enforcement of state laws. The theory of local government allows the different localities to select their own officers, although these officers may be integral parts of the state administration and share with the governor a part of the executive power. In some states—New York, for example—the governor has power to suspend and remove some of these local officials, but generally this power of control is very slight.

Other
limitations
upon the
governor's
power of
appoint-
ment and
removal

Next to the power of veto, the governor's power of appointment is his strongest political weapon. Although it is neither absolute nor completely independent, yet a very large number of officials owe their political and official life entirely to the governor. Thus, as in national and municipal affairs the executive, through the appointing power, may build up a personal following, so the state governor, through the use of the patronage, may consolidate his position within his party. He may do even more and, by sharing his appointing power with the

Political
conse-
quences
of the
governor's
power of ap-
pointment

¹ Arkansas, Colorado, Florida, Maryland, Nebraska, Pennsylvania, West Virginia.

² See "Removal of Public Officers. A Ten-Year Review," in *American Political Science Review*, Vol. VIII, pp. 621-629.

³ In Massachusetts, where the judges are appointed for life, they may be removed by the governor on a joint address of the legislature.

legislators, obtain from them support for his measures. This power is actually far less than that of the president of the United States or of the mayors of large cities because of the many restrictions upon the free exercise of the governor's power.

(3) Power of
pardon

The power to grant pardons for convictions of offenses is generally one of the governor's prerogatives.¹ It is, however, not an unlimited power nor is it always exercised independently by him. He is usually prohibited from granting pardons for impeachments and often for treason. Of course it is obvious that the governor's power of pardon should be limited to the proceedings of the courts of his own state; for judgments of courts of other states or of the federal courts he has no such prerogative. In Connecticut the pardoning power is vested in the legislature; elsewhere it is vested in the governor or in a board of pardons or council, or in both.² Sixteen states have separate boards of pardons. In five states the board of pardons has sole power. In others the governor has the pardoning power on recommendation of the board or a council. The power to pardon generally includes the power to remit fines, penalties, and forfeitures and to grant reprieves and commutation of sentences, although there are great variations in the practice in various states.

(4) Military
power

In the constitutions of most states the governor is designated as commander in chief of the militia. Actually, the governor, like the president of the United States, never commands in person. His military functions are generally exercised through the adjutant general. The governor, however, commissions the officers, although this is to a certain extent regulated by statute.

Use of the
militia

One power is given to every state governor except in Tennessee. This is the power to call out the militia in case of riot, disorder, or rebellion. In Tennessee³ the militia may be called into service only when the legislature by law declares

¹See Bulletins for the Massachusetts Constitutional Convention, Vol. I, No. 4.

²Maine, Massachusetts, and New Hampshire vest the power of pardon in the governor and the executive council. In thirty-two states the governor has sole power to pardon.

³Constitution of Tennessee, Article III, Sect. v.

that public safety requires it ; thus, should the necessity for the utilization of force arise during the recess of the legislature a special session must be called. Generally, however, the governor does not call out the militia on his own initiative, but at the request of the local authorities of the area in which the disturbance occurs. When the militia of the states is summoned by federal authority and incorporated with the military forces of the United States the governor ceases to be commander in chief.

Technically, martial law cannot exist within a state. The militia and the use of the military force are but additional police forces, not to wage war but to preserve the peace. Nevertheless the governor may take certain steps in preserving the peace which are not reviewable by the courts. Thus, in 1903 the governor of Colorado declared a certain portion of the state to be in rebellion and arrested and detained certain persons. The supreme court of Colorado held that his action was not reviewable by the state courts. This opinion was upheld by the Supreme Court of the United States, which, speaking by Justice Holmes, said : Martial law

That means that he shall make the ordinary use of the soldiers to that end; that he may kill persons who resist, and, of course, that he may use the milder measure of seizing the bodies of those whom he considers to stand in the way of restoring peace. Such arrests are not necessarily for punishment, but are by way of precaution, to prevent the exercise of hostile power. So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office, on the ground that he had not reasonable ground for his belief. . . .

No doubt there are cases where the expert on the spot may be called upon to justify his conduct later in court, notwithstanding the fact that he had sole command at the time and acted to the best of his knowledge. That is the position of the captain of a ship. But, even in that case, great weight is given to his determination, and the matter is to be judged on the facts as they appeared then, and not merely in the light of the event.¹

¹ *Moyer v. Peabody*, 212 U. S. 78, 83, 84, 85, 86.

(5) The governor as representative of the state

The governor represents the state in its official dealings with other states. By the United States Constitution the states are forbidden to make treaties, although they may make agreements subject to the approval of Congress. In one way, however, the governor is the diplomatic representative of the state. This is in cases of extradition.¹ By the Constitution of the United States persons "charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on the demand of the executive authority of the state from which he fled, be delivered up. . . ." In practice the governor of the state from which the fugitive has fled makes this demand upon the governor of the state in which the fugitive is apprehended. Although the provision of the constitution is mandatory, a governor exercises his discretion as to whether he shall honor such demand.

The conference of governors

In 1908 began a series of conferences of the governors of the different states. This was under the auspices of the national government, and it was hoped that coöperation would be brought about. The first sessions of the conference were extremely interesting and suggestive, and it was believed that uniformity of legislation and harmony of action might result. These hopes, however, were not realized. Yet the conference is valuable in furnishing a clearing house for the interchange of views, and exercises, perhaps, an intangible influence.

The strong governor

During the first decade of the twentieth century several states elected rather remarkable executives,—executives who made themselves the real political leaders of the state both in legislation and administration. To these governors was given the name of "strong governors." In New York, Roosevelt may be taken as an example; in Missouri, Folk; in California, Johnson; in New Jersey, Wilson. Considerable attention was paid to their administrations, and it was felt that a new era and a new development of the state executive had opened. In some instances these governors were successful in leaving a

¹ Everett Kimball, *National Government of the United States*, pp. 80-81; W. W. Willoughby, *The Constitutional Law of the United States*, Vol. I, pp. 222-224. C. A. Beard, *Readings in American Government and Politics*, p. 148, gives examples of extradition proceedings.

more or less permanent impress upon the state administration, in others their plans were reversed by subsequent legislatures. Nevertheless they showed the possibility of a new position for the state executive.

Originally the governors of the states ranked high in political hierarchy.¹ John Jay, for example, resigned the chief justiceship of the Supreme Court of the United States to become governor of New York. This high position, however, was not due to the actual powers and prerogatives the governor possessed. It was more a tradition from colonial and revolutionary days. During the nineteenth century, as has been shown, the legislature steadily lost in power and influence, and to a certain extent the governor gained. He certainly increased his legislative powers through the use of the veto and, to some slight degree, his appointing power. At the time of the Civil War the governor's position was important largely because of his power as commander of the militia. This was true especially in the border states, although certain "war governors" of other states made enviable reputations for themselves. By the close of the nineteenth century the governor became potentially the most powerful element in the political life of the state. His power, however, rested not so much upon constitutional grants as upon his political influence. In public estimation the governor was regarded as the bulwark and protection of the people against legislative inefficiency. Because of his legislative power and, in particular, through the use of his veto power the governor was held responsible for the passage of laws and for economy in appropriations. In many instances the governors have been successful. Such success has attended their efforts that demands have been made that the administration of the state should be centralized and integrated and that the governor should be at its head. Some steps have been taken in this direction, and in the reorganization of the administration of several states the governor is the integrating force.

"The new rôle of the governor"

¹J. M. Mathews, "The New Rôle of the Governor," in *American Political Science Review*, Vol. VI, p. 216, and "The New Stateism," in *North American Review*, Vol. CXIII, pp. 808-815; J. A. Fairlie, "The State Governor," in *Michigan Law Review*, Vol. X, pp. 370-383, 458-475.

In spite of the governor's increased power the office has not increased in popular estimation. Today governors regard the office as a stepping-stone to something higher—to the Senate or the president's cabinet, or even to the presidency itself. In fact, the success of the governor in the administration of the affairs of his state has frequently made him a presidential possibility or actuality. The names of Hayes, Cleveland, Roosevelt, and Wilson are examples of successful presidential aspirations as a reward of successful state administrations, while Cox, Johnson, Lowden, and many others may be taken as examples of presidential possibilities.

CHAPTER VIII

STATE ADMINISTRATION

State administration is both decentralized and disintegrated.¹ It is decentralized in that the local areas—counties, cities, and towns—are frequently charged with the enforcement of state laws and with the appointment and supervision of the officials who administer these laws. The most obvious example is found in the police of the cities, the constables of the towns, and the sheriffs of the counties. Administration is disintegrated in that, unlike the administration of the federal government, there is no single chief executive. The governor and numerous other executive officials are chosen directly by the people and thus have equal authority and are not responsible one to the other. Thus a governor cannot control an attorney-general nor remove a state treasurer, although his administration is vitally affected by the actions of these officials.

Char-
acteristics
of state
adminis-
tration

State officials, as distinguished on the one hand from local officials and on the other from state employees, may be divided into two classes.² The first class includes the governor, lieutenant governor, secretary of state, attorney-general, state treasurer, state auditor and, perhaps, one or two other officers. These offices are established by the constitution, and their incumbents, known as heads of departments, are usually elected directly by the people. This group of officials is sometimes designated as the executive department of the government. A second and by far larger class of state officials hold offices which are sometimes established by the constitution,

Composition
of the state
executive
department

¹The best account of state administration is by J. M. Mathews, *Principles of American State Administration*, 1917. A. N. Holcombe, *State Government in the United States*, chap. x, gives a very valuable and suggestive discussion.

²See J. M. Mathews, *Principles of American State Administration*, chap. vi.

but more often by the legislature. These offices may be single or plural in composition; that is, the department may be presided over by one commissioner or by a commission. These officers are chosen in a great diversity of ways, for varying terms, and are subject to different degrees of supervision and control. They perform the multitudinous functions which the modern state undertakes.

The executive departments:

(1) The lieutenant governor

[Duties of the lieutenant governor]

(2) The secretary of state

[Duties]

In about thirty-five states there is a lieutenant governor,¹ usually elected at the same time and in the same manner and with the same qualifications as the governor. He may be classed as an executive officer, generally with legislative functions. As an executive officer his duties are largely potential and ex officio. As a potential executive officer he succeeds to the duties of the governor in case of death, resignation, or removal; as an ex-officio executive officer he is frequently found on numerous commissions and boards. He presides over the governor's executive council in the few states²—Massachusetts, for example—where it has survived. The legislative function of the lieutenant governor is that of presiding over the upper house or senate of the state legislature in thirty-four states. Unlike the speaker of the lower house, he acts rather as a moderator than as a political leader.

The secretary of state is an officer found in all the states. Practically everywhere he is chosen by direct popular vote.³ As a result of popular election he is independent of any superior administrative control, but his powers are minutely regulated both by the constitution and by the statute. Indeed, the legislature may prescribe for him duties entirely unconnected with his office and pay him additional salary therefor. His qualifications and term of office are generally the same as that of the governor.

The functions of the secretary of state are numerous and varied. He is usually keeper of the public records, authenticates

¹See "The Lieutenant Governor," in *American Political Science Review*, Vol. XI, pp. 88-92.

²Massachusetts, New Hampshire, North Carolina.

³In Delaware, Maryland, New Jersey, and Pennsylvania he is appointed by the governor with the consent of the senate.

public acts, and is required to seal all commissions. In many states he has important duties in connection with elections: the ballots are sometimes prepared under his direction and certificates of election are issued by him. In some states he issues certificates of incorporation to companies organized under state laws, grants licenses, and may serve as ex-officio member on numerous boards and commissions. His duties are chiefly ministerial in character, although in some states he has considerable discretionary power. In general his office and functions are ill defined and might with propriety be transferred to other departments and the office abolished.

One of the most important executive officers chosen by direct popular vote¹ is the attorney-general.² While in many states his term coincides with that of the governor there are several exceptions. He is subject to impeachment in all states, and in New York he may be removed by a two-thirds vote of the senate on recommendation of the governor.

(3) The
attorney-
general

The attorney-general represents the state in all legal actions whether in its own or in the federal courts. He prosecutes offenders against state law and defends state officials in actions brought against them in their official capacity. He has some power, though limited, to enter a nolle prosequi and thus discontinue an action.

[Powers and
duties]
[Forensic
functions]

He may be called upon by the governor, the legislature, and other officials of the state to render opinions upon legality of action or upon the constitutionality of measures. His opinions are generally not mandatory nor do they furnish a justification for any action taken in accordance with a mistaken opinion. The attorney-general also consults with and advises the local prosecuting attorneys.

[Advisory
functions]

The attorney-general may pass upon applications for suggestions to the court of certain extraordinary writs that may

[Quasi-
judicial
functions]

¹In New Jersey and Pennsylvania he is appointed by the governor with the advice of the senate, in New Hampshire by the governor and council, in Tennessee by the judges of the highest court, and in Maine by a joint vote of the legislature.

²See J. M. Mathews, *Principles of American State Administration*, pp. 140-145; also *Cyclopedia of American Government*, Vol. I, p. 93.

be issued; as, for example, the writ of quo warranto to test the title of an officeholder.

[Miscellaneous functions]

The most important of the attorney-general's miscellaneous duties is in connection with the board of pardons, where his opinion is often conclusive. In addition he not infrequently serves as an ex-officio member of one or more of the state boards or commissions.

(4) Assistant attorneys-general and council for commissions

It is often the case that many of the numerous state commissions are authorized to employ special counsel to advise them in their proceedings. The utilization of such advice further disintegrates the state administration and tends to cause friction between the attorney-general's office and the commission. Even where such conflict does not arise the measure is one of doubtful coöperation and harmony. Some states allow the governor or attorney-general to appoint special deputy or assistant attorneys-general to conduct special prosecutions. These deputy assistant attorneys-general may be intrusted with the prosecution of a question of interest to the state at large or may be assigned to some particular locality in which the local district or county attorney is not showing sufficient activity, needs assistance, or is proved inefficient.

(5) County or district attorneys

County or district attorneys are charged with the enforcement of state laws. They are chosen directly by the people within their districts and are not responsible to the attorney-general's department. They are local officers and as such will be discussed in later chapters.¹

(6) Financial officers

Every state has a state treasurer.² In forty-four of the states he is elected by direct popular vote and is thus by law independent of the governor, in some states serving for a term which does not coincide with that of the governor. Originally the treasurer was supposed to have physical possession of the state funds and was personally responsible for them. Now, however, the states have provided vaults for the security

¹In Maine, Maryland, New Hampshire, and New Jersey they are chosen by the legislature.

²See especially J. A. Fairlie, "Revenue and Financial Administration," in Report of the Efficiency and Economy Committee of Illinois, pp. 146-149; J. M. Mathews, *Principles of American State Administration*, pp. 145-148.

of the funds or they allow the treasurer to deposit the state funds in banks.¹ The duties of the treasurer are chiefly ministerial; that is, he receives the funds raised by taxes and other methods and disburses them in accordance with warrants drawn upon him by other officials. His chief discretionary function lies in the determination of state depositories, where this is allowed to him. Nowhere has the state treasurer any of the powers of a finance minister abroad or any influence over the revenue laws or appropriation bills. In addition to these duties the state treasurer is frequently ex-officio member of numerous boards.

In all states but three there is a separate officer and office for the purpose of auditing the receipts and payments to the state treasurer.² The auditor, or comptroller, is elected by popular vote in all but two states.³ His term generally corresponds to that of the state treasurer, although in four states he serves for a longer term. He is thus independent of both the governor and the state treasurer, but in no state does he have a quasi-judicial tenure like the auditing officials in Great Britain. The chief function of the auditor is to act as a check on the state treasurer; that is, to issue warrants for the payments of money and to check the various branches of state government and keep them within the limits of their appropriation. It is his duty to see that no money is paid out of the state treasury except on appropriation of the legislature or by law. In some states he receives and compiles the estimates for appropriations and has certain duties in connection with the assessment and collection of taxes. In New York, Ohio, and several other states he has supervision of the accounts of the county and municipal officials. In addition, he is frequently an ex-officio member of various boards and may act in other capacities than those directly connected with state finance.⁴

(7) Auditor,
or comp-
troller

¹In some instances state treasurers have deposited funds in banks of doubtful character and the state has lost thereby.

²In Wisconsin and Oregon the secretary of state acts as auditor. In New Hampshire the governor appoints a committee of the executive council and draws warrants on the treasury himself.

³In New Jersey and Tennessee he is appointed by the legislature.

⁴See Chapter XII, State Finance.

The relation
of the heads
of depart-
ments to the
governor

In practically all the states the heads of departments are elected. They are elected at the same time as the governor and thus may claim coördinate authority with him. The governor has practically no control over them, although some constitutions and statutes provide that the governor may obtain from them information in writing. In some states they are required to make reports to the governor, either at stated intervals or when called for. The governor, however, has practically no power to follow up these reports and to compel action. As has been seen, he has practically no power to remove, suspend, or discipline the elective heads of the departments. Moreover, he has no power to control the organization within a department. This is regulated either by the head of the department or, more usually, by statute. The governor may issue commands and directions, but the executive officers need not obey them unless ordered to do so by the court by a writ of mandamus. This is admittedly a cumbersome method. It is, moreover, applicable only to the ministerial duties of the departments and does not apply to those functions requiring executive discretion. The relation between the governor and the heads of departments is not an administrative relation but a legal one.¹

State boards
and com-
missions

The creation of state boards and commissions began at about the middle of the nineteenth century.² Originally the administrative activities of the states were few. Little was undertaken by the government in the way of administrative services, and the greater part of that little was performed by the local governmental bodies. The increase of population and the changing economic conditions as well as a changing conception of the duties and functions of the state brought about an increase in the administrative activities. This was partly due to the feeling that business of certain types should be more

¹See J. M. Mathews, *Principles of American State Administration*, pp. 148-155.

²*Ibid.* chap. viii; C. A. Beard, "Commissions in American Government," in *Cyclopedia of American Government*, Vol. I, p. 350; J. H. Finley and J. F. Sanderson, *American Executives and Executive Methods*, chap. xiii; F. H. White, "Growth and Future of State Boards and Commissions," in *Political Science Quarterly*, Vol. XVIII, pp. 631-657.

strictly regulated. Beginning in finance, with regulation of banks and other financial institutions, government regulation has extended to insurance companies and to railroad, express, and other public-service corporations. Moreover, countless laws have been passed regulating the conditions in the conduct of business, particularly of manufacture. Industrial relations, conditions of employment, hours, wages, and labor disputes have all been subjects of state legislation. But this alone would accomplish nothing; the laws must be enforced. Neither the legislature nor any of the existing departments was equipped to perform this duty. Hence new commissions and new boards were established to keep pace with the constant increase in legislation.

The second tendency brought about the increase of the state administrative departments. This was a changed conception of the function of government. Rightly or wrongly, the demand has been made upon the state that greater and increasing care should be given for the public safety, the health of the community, the poor, and the defective, as well as for the conservation of the public resources and the improvement of public comfort and well-being. In order to accomplish these ends a constantly increasing number of new boards and commissions have been established.

It is almost impossible to make an adequate or satisfactory classification of the services of state boards and commissions, but the following classification will give some idea of the varied duties undertaken:¹ (1) Industrial. This includes the boards of agriculture and horticulture and the inspectors of mines and factories. (2) Scientific. Under this head are found the boards of health, bureaus of labor statistics, boards of survey, and (in a few states) state chemists, or vaccine agents. (3) Supervisory. The most important examples of such boards are the boards of arbitration, railroad commissioners, commissioners of insurance, banking, inland fisheries, and game.

Classifica-
tion of
boards and
commis-
sions on
basis of
services

¹ See F. H. White, "The Growth and Future of State Boards and Commissions," in *Political Science Quarterly*, Vol. XVIII, pp. 631-657. This is also reprinted in P. S. Reinsch, *Readings on American State Government*, pp. 222-239.

(4) Examining. Many states require special qualifications for certain professions and trades; to apply these, examining boards are created. Among the more common are those for doctors, pharmacists, dentists, pilots, undertakers, horseshoers, barbers, and plumbers, and this by no means exhausts the list.

(5) Educational. In this category are found the state boards of education and, in some states, public-library commissions.

(6) Executive. The most important example is probably the state-highway commission, which exists in many states. But in some states we find park, water, and sewage commissions and canal boards. The purpose of these commissions is generally to accomplish some great specific public work involving engineering skill. (7) Corrective and philanthropic. Under this head are classified the commissioners of charities and corrections, superintendents of prisons, and hospital commissions. It will be seen that this classification is not free from a certain amount of overlapping. Indeed, the commissions themselves occasionally overlap one another in authority.

Classifica-
tion accord-
ing to
powers:

(1) Legisla-
tive

(2) Judicial

(3) Admin-
istrative

The commissions may well be classified according to the character of the powers they exercise, and thus would be divided into administrative, legislative, and judicial commissions. Those commissions which issue rules and regulations are properly classified as legislative commissions. Thus, for example, a state railroad commission, which determines the rates to be charged by the railroads within the state, is really exercising subsidiary legislative power. State boards and commissions which are appointed to conduct hearings and are empowered to administer oaths and to summon witnesses are exercising a quasi-judicial function. The great bulk of state commissions and boards, however, are purely administrative in character. They supervise, regulate, or actually conduct some enterprise, and are not hampered by the rules which govern judicial or legislative procedure.

Classifica-
tion ac-
cording to
the extent
of powers

Commissions may exercise their powers in various degrees.¹ Many commissions are purely advisory, having the power to investigate and make recommendations but no power to enforce or carry these into effect. Other commissions have mandatory

¹ See J. M. Mathews, *Principles of American State Administration*, p. 100.

power; as, the boards of health, which, in some states, have the power to make regulations, the violation of which constitutes a penal offense.¹

The decisions of state boards and commissions are rarely final. Appeal must generally be provided, and the acts of the commissions are as a rule subject to review by some other body. In general, this duty is given to the courts. The courts, however, are increasingly reluctant to interfere with the determinations of commissions and usually decline to substitute their judgment for that of a state board in the determination of questions of public policy.² The courts, moreover, may be given jurisdiction merely over the method by which the conclusion was reached and not over the subject matter. Sometimes it is provided that no court appeal shall be allowed from the finding of a board on the question of fact. By other methods as well a general tendency is seen to extend the functions and strengthen the conclusiveness of the determinations of such boards.

Conclusive-
ness of
administra-
tive deter-
minations

The internal organization of state boards and departments is practically always prescribed by the legislature. The board itself is created according to a certain form or plan which the legislature has in mind, and its organization and personnel, if not determined by the constituent statute, is frequently affected by the annual appropriation bills. So far is this carried that not only is the number of the employees regulated but also the number of subdepartments of the board, special appropriations are made for the salaries of the staff (whose duties are frequently determined by law), and the exact sums are prescribed for the purchase of certain articles.

Internal
organiza-
tion of state
boards and
depart-
ments;
legislative
control

In some states, however, a different tendency is recognizable. Sometimes the legislature appropriates lump sums to the departments to be spent for salaries and expenses as the department sees fit. This gives greater administrative efficiency, but tends to conflict with the canons of strict budgetary regulation.³ Where the appropriations are itemized, some of the states allow

Modern
develop-
ment

¹Louisiana.

²See J. M. Mathews, *Principles of American State Administration*, p. 162, with cases.

³See pages 232-235.

the transfer of funds among the several departments of the same commission. In a few states the commission is given the authority to employ a certain staff, not exceeding a certain number, but only very rarely is the department or board allowed the power to create subdepartments and subdivisions and to fix salaries.¹

Types of
departmental
organization with
elective
heads:

(1) Single-
headed
department

(2) Multi-
ple-headed
department
elected by
the people

(3) Multi-
ple-headed
department
elected by
districts

The various types of departmental organization may be classified first under two main heads: those in which the head of the department is chosen by popular election and those in which he is chosen by some other method.² There are three types of departmental organization in which the chairman or head is chosen by popular election: The first is the single-headed department and is the most common. Most of the executive departments which have been examined in this chapter are of this type; for example, the office of the secretary of state, state treasurer, and so forth. The second is the department with several heads elected by the people of the state at large. This is well illustrated by the boards of regents of state universities. The third is the department of several members elected by districts; as, for example, the railroad commissions and state boards of equalization. This variety has not proved satisfactory, since too frequently the members are dominated by the local interests of their respective districts rather than by the more general interests of the state. The second type is not very widely used, but where found has generally given a measure of satisfaction. The first type is the most common and, on the whole, the most satisfactory. It should be remembered, however, that with the exception of the attorney-general few of the important administrative departments are now filled by popular election. There are frequent exceptions to this in many states, but the general tendency in

¹ This is done by the New Jersey statute creating a bureau of shell fisheries.

² See A. N. Holcombe, *State Government in the United States*, pp. 319-325; J. M. Mathews, *Principles of American State Administration*, pp. 164-168; L. A. Blue, "Recent Tendencies in State Administration," in *Annals of the American Academy of Political and Social Science*, Vol. XVIII, p. 434.

filling the more recently created administrative positions is away from popular election.

Five different varieties of the second type of departmental organization may be distinguished: First, a department with a single head appointed by the governor. This is found in all the states and is becoming more frequent. The head of the department may be appointed either with or without the consent of the senate or executive council. Most experts in administration advocate the appointment of such a chairman without requiring the consent of the senate. By this method the governor is given a free hand and responsibility is concentrated upon him. This type of departmental organization is most common in the departments of banking and insurance.

Types of departmental organization with nonelective heads:
(1) Single-headed department, appointed by the governor

The second variety of departmental organization, though rarely used, is found in the departments of education in certain states; for example, in New York. There the legislature chooses the state board of regents, which appoints the commissioner of education, to serve during the pleasure of the regent. Since in New York a regent is annually chosen for twelve years, the board (and consequently the commissioner) is pretty effectively taken out of politics. Generally, however, where this type of departmental organization is adopted, the governor rather than the legislature appoints the board, and it selects the commissioner.

(2) Single-headed department, not appointed by the governor

The third form of organization was first adopted for educational, agricultural, charitable, and public-health departments. In it there is an unpaid board, which, unlike the board in the second type just discussed, takes an actual part and often an active one in administration. The board, however, employs an expert, usually highly paid, to carry out its policies. The extent to which the board controls the expert or the expert influences the board varies in different states and depends upon the character of the men concerned.

(3) Multiple-headed commissions with expert agents

The fourth is the most common kind of organization for boards or commissions. In it the members are adequately compensated; they are expected to devote their entire time to the duties of the board and to take an active personal part in

(4) Multiple-headed commissions actually working

carrying out its functions rather than merely to supervise them. The secretary is a subordinate and, unlike the agent in the third type, his duties are confined to executing the directions of the board. Boards of this type exercise not only administrative but quasi-legislative power. Some of the most obvious examples are the railroad commissions and public-service commissions, together with the industrial commissions which have recently been organized in various states.

(5) Single-headed department dependent upon an advisory council

In the fifth type the head of the department is appointed by the governor either with or without the consent of some confirming body, but his functions and powers are conditioned upon the advice of an advisory council. The first modern instance of this was found in Massachusetts, in the department of boiler inspection organized in 1907, and later in the Pennsylvania department of labor as organized in 1913 and in the organization of the departments of health of New York and Massachusetts in 1913 and 1914. This kind of organization has much to commend it in cases where the functions involve quasi-legislative powers. The councils hear the evidence and make certain regulations or rules; there their duty ends. The commissioner, who is an expert administrator, then carries into effect or applies these regulations to specific cases as they may arrive.

Relative merits of a commissioner or a board in state administration

Most experts favor a commissioner rather than a board for state administration. The disadvantages of the board may be summed up as follows:¹ (1) Frequently boards are composed of ex-officio members who give only a part of their time and attention to the work. (2) In case the board is composed of members chosen from different sections of the state, the difficulty of getting the entire board together makes frequent meetings impossible. (3) Boards are slow to reach decisions. (4) If adequate salaries are paid, the expense is greater than that of a single commissioner. If the boards are unpaid or underpaid, the members will not give the necessary attention. (5) A board is not as responsible as a single

¹ J. M. Mathews, *Principles of American State Administration*, p. 165; L. A. Blue, "Recent Tendencies in State Administration," in *Annals of the American Academy of Political and Social Science*, Vol. XVIII, p. 434.

commissioner, since the responsibility is diffused. However, because of this very divided responsibility they are sometimes able to carry through a necessary but unpopular policy. The partial renewal of boards may guarantee the continuity of a policy, which in some instances has an advantage. This, however, is sometimes of dubious value. It may be advisable to bring about a radical change of policy. With a board whose membership can only be changed gradually this is more difficult than in the case of a single commissioner.

Where the work of the board is of a quasi-legislative character, like the making of rates, or of rules and regulations to be applied in industry, a board is better than a commissioner. Likewise, in questions of policy, matters of taste, or questions which may involve racial or religious feeling a board has certain advantages over a single commissioner. On the other hand, where the duties of the board are chiefly executive or administrative and require promptness of decision a commissioner is much to be preferred. It should be remembered, however, that even where the board type of organization is established, its actual functions are often exercised by the secretary or some member of the board or expert employed by it.

The relation of state boards and commissions to the legislature varies. Over these commissions and boards established by the constitution the legislature has little control. The appointment or election of the members may be vested in the legislature or in one house, but the functions of the commission are almost beyond the power of the legislature to define, although it may lay upon the commission duties of a sort similar to those originally prescribed. The control which the legislature exercises in such cases is chiefly over the internal organization of the commission, which may be determined entirely by the legislature. Over those commissions established by the legislature greater power is exercised. The legislature has a free hand in determining the character of the commission, its functions, and its organizations. It may amend or abolish the commission by legislative act. In neither case, however, can the legislature exercise administrative control over the

Merits of
a commis-
sioner or
board judged
by the
character of
the work

Relation of
boards and
commis-
sions to
other de-
partments
of the gov-
ernment:
(1) The
legislature

policy or specific actions of the commission. Its relation to the commission is purely legislative.

(2) The
governor

The relation of the governor to commissions is largely legal. There are so many restrictions upon the governor's power of appointment, direction, and removal that the commissions may function almost as an independent fourth department. Especially is this so where discretionary power may be exercised. This is one of the greatest weaknesses of the administrative system of the state—it prevents coördination and unified direction. Because of the principle of partial renewal for commissions, and long terms for their members, it is often practically impossible for a governor to initiate and carry through an administrative policy. These evils have long been recognized, and important changes have taken place. Even before any structural reform or increase of executive power took place by law, the position of the governor as the political leader often gave him more power of direction than he theoretically possessed. His power of appointment and removal has been greatly increased in many states, and as a result his power of direction has been consequently enhanced. The general tendency of the movement to employ experts in administration is still further to increase this power and to provide for a uniform administrative system under the direction of the governor.

(3) The
courts

The courts exercise a very constant control over administrative boards and commissions. In the first place the courts enforce the limitations of the national and state constitutions upon the operations of the commission. Thus the courts may determine whether property is subject to public regulation, and they have consistently held to the rule that all property affected by public interest was subject to such regulation. The courts have allowed commissions to regulate those classes of property and those interests which the legislature might regulate. Moreover, they test the work of the commissions by the clauses guaranteeing due process, just compensations, and equal protection of the laws, and frequently check the activities of certain enthusiastic boards. The activities of the courts, however, may be restricted in their effect,¹ and the commission may

¹ See pages 302-304.

be vested with the power to make final determination of questions of fact. Furthermore, the courts are slow to substitute their point of view for that of the commission. This is true where the commission is charged with the performance of a discretionary act. In other instances appeals may be prosecuted before the courts and the work of the commission reviewed or accelerated. It must be proved, however, that the petitioner has a direct personal interest in the decision of the commission apart from that as a member of the community.

The evils of the conditions described in the previous pages have long been recognized. Movements to consolidate some of the numerous boards and commissions began in Massachusetts and New York in 1902 and 1901, respectively, and have spread to other states. During the first decade of the twentieth century, however, not much was accomplished. Although there were some consolidations, new creations were more numerous, and while the evils and inefficiencies of the system were recognized and attacked, conditions grew worse rather than better. In many states special commissions were appointed to investigate the actual conditions of state administration. These bodies, usually known as efficiency and economy commissions, revealed a condition which although suspected and unconsciously felt was actually known only to the active politicians. The publication of their reports strengthened the hands of the reformers, and demands became insistent that some consolidation and change take place.

In 1915 New York held a constitutional convention of which the Honorable Elihu Root was chairman.¹ The most numerous group in this convention, known as the "federal crowd,"

¹The Bureau of Municipal Research, New York City, prepared and published several very valuable treatises on state government: (1) "Government of the State of New York: a Description of its Organizations and Functions" (January, 1915); (2) "The Constitution and Government of the State of New York: an Appraisal" (May, 1915); (3) "Budget Systems" (June, 1915); (4) "State Administration" (July, 1915). The Legislative Drafting and Research Fund of Columbia University prepared a valuable book, "Index Digest of State Constitutions," which although now out of date in many particulars still is of great convenience. The Proceedings of the Convention were published in three volumes and contain much of value and importance.

Movements
to reorgan-
ize the state
administra-
tive system

Efficiency
and econ-
omy com-
missions

The New
York Con-
stitutional
Convention
of 1915

proposed and succeeded in getting the convention to recommend certain conservative principles of reform. As regards state administration, the convention proposed amendments providing for (1) the abolition of popular elections in the case of minor administrative officers; (2) the abolition of the power of the senate to confirm or refuse to confirm executive nominations; (3) the reorganization of the one hundred and fifty or more separate administrative agencies in the seventeen departments; (4) the extension of the civil-service system. This reorganization and consolidation, though drastic, was not radical. It involved the principles which had been advocated not merely by reformers but by experts in state administration. The amendments proposed by the convention were overwhelmingly defeated by a popular vote of more than two to one. Nevertheless the work of the convention was not without value, and its influence was far-reaching.

Other
movements
toward
state reor-
ganization;
the Illinois
Administra-
tive Code

In 1917, largely due to the energy of Governor Lowden, Illinois adopted an administrative code which effected a thoroughgoing reorganization.¹ Nine main departments were established: finance, agriculture, labor, mines and minerals, public works and buildings, public welfare, public health, trade and commerce, registration and education. These absorbed the functions of forty executive officers and fifty boards and commissions, as well as a large number of subordinate officials. Each department has at its head a director, and there are about forty other officials in charge of various bureaus. All these officials are appointed by the governor, with the consent of the senate, for terms of four years. The principal results to be expected are more definite responsibility, increased efficiency, and active coördination. The code fails to cover the whole field of state administration: none of the elected officials are included; certain state authorities, like the national guard, civil-service commission, legislative reference bureau, and so forth are outside of the new organization; several boards, moreover, have only a nominal connection with the department with which they are grouped.

¹Laws of 1917, chap. 2. See also J. A. Fairlie, in *American Political Science Review*, Vol. XI, pp. 310-315.

During the year 1917¹ consolidation of the directors of the state hospitals was made in North Carolina,² and in Kansas³ a board of administration was created to control all the educational, benevolent, and penal institutions of the state. Both Kansas and North Carolina established state accounting agencies. In Vermont⁴ a state board of control was established, composed of the governor and three other state officers, to have general supervision over all state departments. In 1919 eight governors recommended the consolidation of related state offices, and considerable progress was made.⁵ In California and Oregon, however, the reports of the efficiency and economy commission and consolidation commission brought little result. In Texas⁶ a board of control composed of three citizens, appointed by the governor with the advice of the senate, was established. This board abolished five state agencies and boards of managers in about fifteen institutions. It is organized into the divisions of printing, purchasing, auditing, design, construction, maintenance and appropriations, and eleemosynary institutions, and prepares the budget for all state offices and departments.

As a result of the constitutional convention held in 1918 the legislature passed a law reorganizing the administrative system of Massachusetts.⁷ In general it followed the New York law, but provided for twenty separate departments. To this extent it is not so effective as the administrative code of Illinois, but seventy-seven independent administrative units were abolished by it or placed under one of the twenty departments. It does not touch the four elective officers—secretary of the commonwealth, treasurer, auditor, and attorney-general; but the heads of all other departments are appointed by the governor with the consent of the council, generally for a term of three years.

¹See American Year Book for 1917, pp. 176-177.

²Laws of 1917, chap. 150.

³Laws of 1917, chap. 297.

⁴Laws of 1917, chap. 32.

⁵See American Year Book for 1919, pp. 224-227.

⁶Laws of 1919, chap. 167.

⁷Acts of 1919, chap. 350.

Idaho

Probably the most far-reaching reorganization which has yet taken place was accomplished in Idaho in 1919.¹ By this the agencies of administration are grouped into nine different departments. The head of each department is appointed by the governor and is removable by him at his discretion, and the governor is also given authority to devise plans for coöperation and coördination and to eliminate duplication. The head of each department is empowered to prescribe regulations for the conduct of his department. Of especial interest is the department of law enforcement, which is given the power "to enforce all the penal and regulatory laws of the state in the same manner and with like authority as the sheriffs of counties." It also has numerous special powers in the way of supervision. In 1919 Nebraska adopted the civil-administration code, by which six administrative departments were created.² Consolidations also took place in Indiana.

Consolidations in
1921

Ohio

During the year 1921 several states took steps to reorganize their administrative departments. The most thoroughgoing reorganization was in Ohio, where an administrative code was adopted April 26.³ This code does not touch the offices or functions of the lieutenant governor, the secretary of state, the auditor, the treasurer, or the attorney-general, but groups the other administrative activities into seven departments: finance, commerce, highways and public works, agriculture, health, industrial relations, and education. With three exceptions these departments are presided over by commissioners, appointed by the governor during his pleasure, who have the power to appoint the heads of the divisions of their departments. In Missouri no general administrative code was adopted, but seven measures were passed, making various consolidations. In New York a bill to reorganize completely the state administration was defeated, but many important consolidations took place, among which may be mentioned the uniting of all tax-collection agencies

Missouri

New York

¹See *American Year Book* for 1910, pp. 225-226, and *American Political Science Review*, Vol. XIII, p. 634. See also Howard T. Lewis, in *National Municipal Review*, Vol. VIII, pp. 216-218.

²See *American Political Science Review*, Vol. XIII, pp. 635-640.

³*Ibid.* Vol. XV, pp. 380-383.

into a state tax commission, the abolition of the industrial commission, and the appointment of a single commissioner. The two public-service commissions of the state were abolished, and a special transit commission was created for New York City, and a public-utilities commission with wide power. In all it is estimated that over two thousand sinecures were abolished.¹

¹See *American Political Science Review*, Vol. XV, p. 385.

CHAPTER IX

FUNCTIONS OF STATE ADMINISTRATION

THE ENFORCEMENT OF STATE LAW¹

Difficulties
of law
enforcement

The lax enforcement of law within the United States is not due to want of statutes. Indeed, it has been said that in the United States there are "more laws and less law than in any other country." When it is remembered that each session of every state legislature produces a substantial volume of statutes and that local units of government have the authority and make numerous by-laws, it can readily be seen that the amount of statute law in the United States is enormous. Many of these laws, however, are badly drawn through haste, carelessness, or intention. Not infrequently ambiguities are inserted to serve some sinister end. This is a species of legislative blackmail. Most of the laws, not emergency measures, are supposed to go into effect immediately upon their passage. Thus many laws are violated through ignorance. The enforcing officers are not always in sympathy with the laws which they are required to enforce. Moreover, since the enforcement of the law is quite generally confided to the local authorities, laws may be interpreted and enforced in different ways in different communities. As will be explained in a later chapter, because of the composition of the legislature in some states the rural members may pass laws affecting the urban populations in a way not upheld by public opinion. When juries fail to convict and judges give light or suspended sentences, the task of the enforcing authorities is made increasingly difficult.

Instru-
ments of
enforcement
of state law

State laws as well as local by-laws are generally enforced by the police in the cities, by the constables in the villages, and by the sheriffs in the counties. These officers are all chosen by local agencies and thus are not responsible to the state

¹ J. M. Mathews, *Principles of American State Administration*, chap. xv.

authorities, although they are charged with the enforcement of state statutes. The state administrative authorities cannot appoint them, remove them, or discipline them. Only in a few states, and for especial purposes, have the state administrative authorities any control over them. The state legislature, it is true, may by statute attempt to control the local police, and by law may vest the appointment of the police commissioner of a city in state authorities. This happens in Boston, Baltimore, and St. Louis, but it is the exceptional procedure.

Independ-
ence of
local
authorities

In almost every state the governor is charged with seeing that the laws are faithfully enforced. He is thus held responsible for law enforcement, although actually he has little power: in a few states he may remove district attorneys or police commissioners; more rarely he can remove a sheriff.¹ But even without legal power to control the local authorities he has at his command the power of publicity. In New Jersey, for example, the governor or the attorney-general may notify the mayor or chief of police of any city that the state criminal law is being violated in certain places; whereupon it shall be the duty of those officials to prosecute the guilty persons. Failure to take such action within ten days is declared a misdemeanor.²

The
governor

In some states³ the governor is given express power to appoint agents to enforce specified laws. This was especially true with regard to the laws governing the sale of liquor. In Oregon⁴ the governor may lay the facts before the circuit court, and if the court finds that the laws are not being faithfully enforced, the government may appoint special officers for a limited period to exercise the powers of sheriffs, district attorneys, or constables, who act exclusively under his direction. Idaho in 1919 provided for a department of law enforcement, to enforce the penal and regulatory laws of the state as well as to supervise the enforcement of certain other laws.⁵

Agents
appointed
by the
governor

¹New York, Wisconsin. J. M. Mathews, *Principles of American State Administration*, p. 100.

²New Jersey Public Laws, 1901, p. 366; quoted by J. M. Mathews, *Principles of American State Administration*, p. 435.

³Maine, Oklahoma, South Carolina.

⁴Session Laws of 1913, chap. 180.

⁵See page 166.

The militia

The ordinary and the ultimate source of law enforcement in the state is the militia. The state militia is recruited by voluntary enlistments, and since 1916-1917 has been partially federalized. Even before that date it was subject to federal inspection, but now it may be directly mustered into the national military establishment. The members of the state militia meet at stated intervals in the state armories and are drilled and trained. Annual encampments are held, and occasionally large bodies of the militia are mobilized at a single place to give the officers experience in handling considerable numbers of troops. The purpose of the militia is to render unnecessary a large standing army, or any standing army under state control, since the latter is prohibited by the federal constitution. The militia is thus an emergency military organization and not a police force.

**Power of
the gov-
ernor over
the militia**

In most states the power to summon the militia is in the hands of the governor, although the objects for which he may call it out are generally enumerated, as in the case of invasion, riot, or rebellion, or to enforce the laws. In practically all the states the summoning of the militia is entirely at the discretion of the governor, and he is the sole judge of the necessity and of the use to which it should be put. From the character of the organization it can readily be seen that it is not a proper police force or one suitable to perform customary police duty in connection with the enforcement of ordinary laws and regulations; it is rather designed as an instrument to preserve the peace in time of riot and rebellion, and as such it has most generally been used.

**Use of the
militia in
strikes**

In recent years the most serious violations of the public peace have come from strikes. This has led to the employment of the state militia in labor disputes; particularly should be mentioned the Colorado strike of 1904, the copper strike in the mines in Michigan during 1913, and the Montana strike of 1914. In all these instances the governor and the officers, acting under the guise of preserving peace and law, actually exercised military power without judicial process. In the Colorado case this was upheld in an opinion by Justice Holmes.

which has already been quoted.¹ "Public danger warrants the substitution of executive process for judicial process." The use of the militia in strikes is subject to much criticism. A state militia may be largely recruited from the industrial class, whose sympathies are with the strikers; and although no cases have arisen where the militia has refused to obey the orders of its superior officers, yet it is quite generally felt that it is contrary to good policy to utilize such an organization for this purpose. One of the recent examples of the use of a state militia was the summoning of the Massachusetts state guard to preserve order in Boston when the usual law-enforcing agents—the police—went on a strike.

The character of the militia as an organization and of its members has led some states to organize other law-enforcing bodies. These are variously named. One of the oldest and by far the most famous is the Pennsylvania Constabulary. This is a disciplined, carefully organized, well-trained body of more than two hundred men and officers. Although it has a military organization and appearance, the Pennsylvania Constabulary is an excellent police force. It has been used with great advantage in strikes, but it also serves as a continuous rural police, preserving order in those districts where the local authorities are generally few and often inefficient. Its members are well grounded in criminal law, and about 90 per cent of their arrests lead to conviction. It assists in extinguishing forest fires, enforcing game laws, and assisting the health officers. It has afforded protection in cases of fire and flood and has proved one of the most helpful agents for the enforcement of law in the United States.

Other state police forces which have been established are the State Police of Massachusetts and of Connecticut; the Texas Rangers; the New York State Constabulary.

Many of the boards and commissions of the administrative department are given power to make regulations, sometimes with the force of law and with penalties. To enforce these regulations and to carry out the functions of the boards,

¹ See page 145.

State police

Other
examples
of state
police forces

Agents of
boards and
commis-
sions

special agents are often appointed. These agents should be classified as law-enforcing agents. In those states where the administration has not been consolidated and the directive power not given to the governor, such agents only add to the decentralization of the law-enforcing department. Where the administration has been centralized, however, less objection can be found to them. Their work varies, both in character and degree. In some states they are merely supervising agents, in others they have power to arrest and prosecute. In several states certain commissions can actually apply penalties, but generally the decree or sentence of the commission or its agent is reviewable by the courts.

EDUCATION

The admin-
istration of
education

One of the very important fields of state administration is that of education. Education differs from most other public functions in that it is both private and public. Like so many other functions of state administration it is shared by both state and local authorities. The original unit of education was the school district. This originated in colonial Massachusetts and spread westward until it is found in some form or another in about thirty different states. The school district is ordinarily a body corporate, choosing a district board (usually of three) to whom are intrusted the provision for the school, the appointment of the teachers, the determination of the curriculum, in fact all educational affairs. This is the extreme democratic form and, while suited to primitive conditions, is costly and inefficient.

The school
district

The county
unit

The more common units are the townships and counties. About a dozen states, most of them in the South, have adopted the county as the unit for school administration, and in approximately forty states, including nearly all of those outside of New England, the county is the unit of supervision. In New England, however, the township or the city serves as the unit, and there is less supervision by higher authorities than in other states.

The county
superin-
tendent

The county superintendent of schools is found in about forty states. In the majority of these he is an elective officer chosen along with the sheriff and other county officers, although

professional qualifications are required in many states.¹ This is unfortunate, since the county superintendent should be an educational expert, and popular election is not the best means of obtaining a man of such qualifications. In a few states, however, he is appointed by some county authorities. The duties of the county superintendent are first, educational, such as visiting the schools, advising, directing, and examining the teachers, deciding questions of controversy, and enforcing the compulsory-attendance laws; second, noneducational, such as the apportionment of state and county funds, giving notice of school elections, and so forth.

In spite of the fact that the control of the schools is generally in some local body, practically all the states exercise supervisory powers. Indeed, education is so important in a democratically governed state that it is of vital interest to the state that this function should be properly performed. In a few states direct control is the method employed. Generally, however, it is found only in higher or professional education, while the lower or common-school education is under the control of the local authorities. Even here, however, the state finds it necessary to exercise supervisory power.

A state board of education or some such body is found in about forty states. This body is variously constituted, either of ex-officio members—which gives the most unsatisfactory results, since the members are generally holding purely political offices—or of appointed members. The appointive boards generally give more satisfaction. In four states² they are appointed by the legislature; elsewhere, by the governor. In Michigan, however, the board is chosen by popular election and has little authority.

State boards of education as a general rule have supervision only over the common-school system proper. In some states, moreover, they have supervision only over the special or higher institutions, such as normal schools and agricultural colleges. In a few states³ they supervise both classes of education. The

¹ Indiana, Iowa, Kansas, Michigan, Nebraska, and Wisconsin.

² Connecticut, New York, Rhode Island, and Virginia.

³ New York, Oklahoma, and Vermont.

New York board, known as the Regents of the University of the State of New York, the oldest in the country, was created in 1784. It is composed of twelve members, one of whom is elected annually by the legislature for a twelve-year term. This board has wide powers and great influence. In general, the department of education exercises three distinct functions: financial (that is, the appropriation and spending of funds), educational (that is, the determination of the curriculum and the inspection of the schools), and professional (that is, the examining and certification of teachers).

The state
superintend-
ent of
education

The actual educational work of the board is generally conducted by an expert, variously named as the state superintendent of education, the commissioner of education, or, in Connecticut, the secretary of the state board of education. Such an officer is found in all the states. In about twenty he is chosen by popular election, which is the poorest method of selection, since it practically always necessitates choosing a resident of the state not so much by the wish of the people as by the operation of political parties. In about ten states he is appointed by the governor; in five, by the board of education. The superintendent of education should certainly be removed from politics and political influence; his qualifications should be high and carefully scrutinized by the appointing authority; and, while subject to removal, he should be given a sufficiently long term to enable him to put his policies into effect. On the whole, election by a board is perhaps the best method of choice.

Functions of
the state
superin-
tendent:
(1) Super-
visory

The functions of the superintendent of education may be classified as follows: (1) Supervisory. In this class would be put his power to visit the schools, to require reports from the county superintendents and other authorities, and the making of rules and regulations to carry into effect the provisions of the school law. (2) Advisory and judicial. In this category are found his power to advise the local school authorities as to the interpretation of the school law and in some instances the power to decide appeals. (3) Administrative and financial. These powers would include the examining of teachers and their certification, the recommendation of textbooks, and the

(2) Advisory
and judicial

(3) Admin-
istrative
and finan-
cial

distribution of state funds among the various localities. The actual influence of a capable state superintendent is far greater than a mere enumeration of his legal powers would imply. His position and influence, however, vary in different states, so that it is almost impossible to generalize.

One method which many states have adopted to control and influence education has been to grant state aid to different localities.¹ The money raised by taxation is apportioned to the different localities according to various methods. The grant of state aid is frequently conditioned upon the maintenance of a certain standard. To insure that this is maintained, state inspection and supervision naturally follow.

Financial
aid from
the state
to localities

In colonial times Massachusetts and Connecticut adopted the principle of compulsory education. The first modern law was enacted by Massachusetts in 1852, and since then the principle has been adopted in all the states. There is the greatest possible variation as to the ages during which this compulsory attendance is required and the number of weeks of school attendance which is necessary. The weakest point of the system lies in its inadequate enforcement. In one state—Connecticut—the agents of the board of education enforce the law; in the other states it is done by the local authorities, truant officers, sheriffs, constables, or the ordinary police force. Since children are allowed to attend private schools there is grave danger that the spirit if not the letter of the compulsory-attendance laws may be violated. In Connecticut all private schools are required to keep a register which shall be open to the agents of the board of education.

Compulsory
education

In about a third of the states textbooks must be supplied without charge, and in other states this plan is permitted. In New England the local authorities determine the character and nature of the textbooks and make contracts with the publishers. In the other states this is generally done by the state board. Two states, however,—California and Kansas,—have undertaken the publication of their textbooks.

Free
textbooks

Practically all states require that teachers should obtain a license granted as the result of an examination before teaching.

¹For example, see Massachusetts, General Acts, 1919, chap. 363.

The training and supervision of teachers

Originally this examination as conducted in many states by the local authorities was a mere farce. The tendency now is to vest in the central state board the duty of examining and certifying teachers. Closely connected with this is the establishment of schools for training teachers. Some states maintain but one normal school, others have several. In some states the different normal schools are under separate and almost independent boards of trustees. The more modern tendency, however, is to put the control in the hands of the state board.

Normal schools

State universities

Many states maintain institutions of higher learning. These may be professional or vocational schools, such as the agricultural colleges, or all branches of higher education may be combined in a state university. The state universities are usually governed by a board of trustees or regents. In the majority of cases these are appointed by the governor, although in Illinois and Michigan they are chosen by popular election. The Middle and Western states have been most generous in their appropriations for this class of education, and the state universities have exercised a powerful influence.

State libraries

Most states maintain state libraries. These, however, are generally for the use of the state legislature and are not well correlated with the local libraries. New York, however, is an exception; and the New York State Library, which is a division of the Department of Education, not only has charge of all books, pamphlets, records, and archives but undertakes legislative reference research¹ and library-extension work, and maintains a library school.

CHARITIES

Charity

Public charity was at first almost entirely confined to the relief of the poor. In the older states this was at first granted to the local authorities. Originally it was little more than granting outdoor relief, but as the districts became more settled and pauperism increased, provision had to be made for the maintenance of an increasing number of paupers. In

¹See page 216.

some communities the local authorities contracted with some citizen to care for this class. This process of "farming out" the paupers was most unsatisfactory. The poor-master had interest chiefly in his profits. During the nineteenth century, in many of the older states, poor relief came to be vested in the counties, whose authorities exercised some supervision over the inmates of the town or local institutions. Although there were some improvements, there was little attempt to classify or differentiate the unfortunates, and a single institution or poorhouse might contain paupers, feeble-minded persons, the insane, and often delinquents.

Local relief has in every state been supplemented by state relief and state supervision. There are two reasons for this. In the first place there developed a class of people without fixed residence for whose maintenance the towns were unwilling to appropriate money. In the second place, when the state granted relief for these state paupers it demanded a certain amount of supervision over them. At first this supervision was almost negligible, but gradually it became more minute, and in some instances the state itself maintained institutions for the relief of the state paupers. In general, this has been an improvement. The local authorities are frequently inefficient and ignorant. Too often their sole idea is to maintain rather than to cure. Moreover, the local authorities, whether private or public, are less able financially to meet the burdens of their task, and consequently they have called upon the state to supplement their means.

From many points of view private charity, except in the case of great catastrophes, is better than public charity. It is more personal and more likely to consider the peculiarities of each particular case. Moreover, the effect upon the community of interesting a large number of people in charitable enterprises is good. Nevertheless, private charity is often indiscriminating and unintelligent and too often increases rather than diminishes the number of dependents. Again, successful private charities frequently spend beyond their resources and are thus compelled to ask aid from the public treasury for their support.

State
supervision

Private
charitable
institutions

Should
private
charities be
subject to
public su-
pervision?

If a private charitable organization receives public aid, it should indubitably be subject to some sort of public control.¹ There is great danger in appropriating a lump sum to a charitable organization without guarantee that it will be economically or properly spent. This is all the more dangerous when it is remembered that not infrequently these state grants are the result of political influence. If the policy of making state grants to private institutions is to continue, some method of control or supervision should be employed. In Illinois, for example, before charitable institutions for children can be incorporated they must be subject to examination and approval. Oklahoma has gone even further and provides that all public institutions, whether public or private, whether receiving state aid or not, shall be subject to the inspection of state officials. This subjecting of private charity to state inspection and supervision now receives the approval of experts.

Local public
charities
should be
also subject
to state
supervision

Even the public charities managed by the local authorities need state supervision. Investigations in various states show an appalling lack of intelligent direction and proper consideration and reveal great diversities. Vesting the management of the charitable institutions in local boards of trustees too frequently perpetuates local prejudice and inefficiency. At first the state authorities (usually boards) were given the power of visitation; but it was soon found that this was not enough, and a measure of direction and management was given to the state authorities. This ran counter to the historical development of the work. In almost every state both the state institutions and, of course, the local institutions were controlled by boards of local trustees. These local boards, while perhaps more familiar with the conditions and presumably able to give more of their time and attention, did not prove altogether satisfactory. Economy and efficiency demanded some wider or higher supervision. At first there was an attempt to exercise this by

¹This question has been frequently discussed at the sessions of the National Conference of Charities and Corrections. See, especially, Proceedings for 1911, pp. 9, 20; *ibid.* (1900), p. 307; *ibid.* (1908), pp. 18-56; *ibid.* (1905), pp. 434, 494; etc.

legislative investigations. These, however, proved of little use, since the members too often regarded them as "junkets."

In 1851 Massachusetts established a board of alien commis-
 sioners having certain supervision over specified classes of
 paupers, and in 1863 the Massachusetts State Board of Char-
 ities was established. From that time on the system has spread
 until practically all the states have a department to supervise
 and, in a measure, to control both the state and local charities.

State
boards of
charities

The powers which these boards exercise are supervisory,
 mandatory, or both. In nearly all the states east of the Missis-
 sippi the earliest state boards exercised merely supervisory
 power. The centralized board of control is more usual in the
 Western states, although New York and Rhode Island had
 boards of this type in the middle of the nineteenth century.
 The chief characteristic of the supervisory board is that the
 actual management of the institution or charity is still vested
 in a local board of trustees. This insures the services of cer-
 tain public-minded citizens, but not necessarily of expert per-
 sons. The legal powers of the supervisory board are slight,
 yet their influence, through publicity, is great. Actually,
 there are now very few states which maintain purely super-
 visory boards. In almost every instance the success of these
 boards has justified giving them more power, chiefly in the
 way of veto.

Functions
of the
department
of charity

The administrative boards of control which are found in
 many states are to be distinguished from the supervisory boards
 because of their composition. The administrative boards con-
 tain a number of small-salaried members who presumably de-
 vote their full time. A very real danger arises in this type
 that it may be used for political purposes, particularly in the
 way of patronage. To prevent this Iowa has devised an almost
 perfect system which, while vesting in the board the appoint-
 ment of the superintendents of the different institutions, leaves
 to the latter the appointment of the subordinate employees.
 The advantages of the board of control lie in the fixing of
 uniform salaries, the possibility of buying on a larger scale,
 the careful supervision of the financial administration of the

Administra-
tive boards
of control

different institutions, and the initiation of policies as the result of research and extended investigations. A danger lies in the fact that the board may become bureaucratic, slow to alter its policy, and, most important of all, independent of higher supervision.

CORRECTIONAL INSTITUTIONS

Correctional
institutions

Originally the correctional institutions consisted of the jails maintained in the older states by the counties and supplemented by a state prison. Until the nineteenth century there was little intelligent interest shown in penology. The local authorities made inadequate provision in their local jails for the inmates, and there was no attempt to separate different classes of offenders—often the insane or defective were confined in the same institution and no attempt was made to separate juvenile offenders and those convicted of petty crimes from the more hardened criminals. The sanitary conditions of the jails were often wretched.

State
supervision

State supervision began in 1846 with the establishment of the inspectors of the state prison in New York, and from that date the system was expanded. It generally functioned through a board or commission and at first, as in the case of charities, had only supervisory power. In many states the supervision of state charities and state prisons was intrusted to the same board. What has been said of the various types of the administration of state charities would apply to the correctional institution. The same problems of local trustees and state supervision and, finally, control have been worked out in this field with practically the same results as in the field of charity. The modern tendency is now to vest not only the supervision but a large measure of control in the hands of a state board or commission.

Problems
connected
with cor-
rectional in-
stitutions:
(1) Classi-
fication

Practically all the states make some attempts at the classification of criminals. The most common classifications are into male and female, old and young, habitual and first offenders. In many states, however, this classification is carried further, and different types of institutions are established, like reformatories, state farms, and so forth.

It has been found necessary to provide employment for (2) Work prisoners. This compulsory labor has a twofold advantage: in many instances it accelerates reformation and preserves discipline and it also relieves the state of some of the burden connected with the prisoner. The helpful results of labor for the prisoner are practically everywhere admitted, but very grave difficulties and divergences lie in its application. In some states the lease system is employed, by which the labor of the convicts is let out to a contractor. This is highly objectionable and is subject to grave abuses. A better system is the employment of the convicts by the state on state enterprises. Where these involve out-of-door labor, such as building roads or working on farms, the results have been extremely fortunate. Any system, however, of the employment of convict labor is bound to bring it into competition with free labor and thus is subject to criticism and opposition from the labor organizations. In many instances the labor of the convicts is confined to the production of goods used in the public institutions of the state or its local divisions. This still involves indirect competition, but is probably the best system which can be devised.

Criminal law usually provides punishment for specific crimes, with a maximum or minimum sentence. This is given by the judge, whose only knowledge of the prisoner is derived from the prisoner's past as disclosed in the trial, and at best is uncertain. Many states adopt the system of indeterminate sentences, prescribing a minimum and maximum and vesting in some board or commissioner the power to determine at what time the prisoner should be released. Another system is to release prisoners on their parole, requiring them to report to the authorities at stated intervals. It is for this purpose that boards of pardon (3) Boards of pardon and parole and parole are appointed. At Sing Sing prison, New York, a system of "follow up" work is undertaken by a staff of social agents.¹ For less serious offenders many states have evolved the system of probation, according to which a first offender is not sentenced but is placed upon probation, subject to the direction of a board or officer. These newer methods of dealing with criminals are designed to decrease crime by

¹See *Mental Hygiene*, Vol. III, pp. 65-77.

effecting a reformation before the criminal habit is formed. To insure success they must be carefully and intelligently administered and subject to most careful supervision.

PUBLIC HEALTH¹

Early
attempts
at public-
health ad-
ministration

The earliest measures concerning public health were in the nature of quarantines. The port authorities of the principal seaports, acting under general governmental authority, at a very early date took steps to protect the health of their communities against the introduction of contagious diseases. These attempts were not altogether successful, and the leading seaports of the Atlantic coast—Baltimore, Philadelphia, New York, and Boston—found it necessary to establish local boards of health in the eighteenth century. The earliest state-wide system of town boards of health was established by Massachusetts in 1787 and was followed by Connecticut in 1805. The first state board of health was instituted by Louisiana in 1865, but this dealt chiefly with the quarantine regulations at the port of New Orleans. The first state board of health to exercise the modern functions was established by Massachusetts in 1869.

Organiza-
tion of state
health
authorities

In most states there is a state board of health, but in some states there are other boards which perform analogous functions, like supervision over the disposal of sewage, the inspection of food and drugs, and the safeguarding of water supplies. The size of the board varies as well as the qualifications of its members. In many states one portion of the board is *ex officio*, while the other is chosen on the basis of professional requirements. In a majority of the states the members were appointed by the governor. A more recent tendency is to specify certain special professional qualifications, as in the act of 1913 in New York, which requires that the council shall consist of six members, of whom three shall be physicians, one shall have had training or experience in sanitary science, and one shall be a sanitary engineer. Massachusetts has a similar council of professionally trained experts.

¹See J. M. Mathews, *Principles of American State Administration*, chap. xiv, with bibliography.

In the majority of the states the executive officer is appointed by the board itself. In some states high professional requirements are insisted upon.¹ The effectiveness of the health administration is generally in proportion to the freedom with which the executive officer is allowed to handle administrative duties. On the other hand, the framing of health ordinances is such an important function that the advice of the board is highly desirable. In both New York and Massachusetts, however, the commissioner overshadows the board or council, while in Oklahoma the board consists of one—the commissioner—and in Pennsylvania the council is purely advisory.

The
executive
officer

The powers and duties of the state boards of health may be classified as (1) indirect or supervisory, which in general is the method by which their functions are exercised in most of the states; or (2) direct, that is, the mandatory control of the local boards or actual performance of measures. Another classification would be into (1) legislative powers (that is, the framing of sanitary regulations), (2) judicial powers (that is, the interpretation of the sanitary laws and codes, the issuing of warrants, and the summoning of witnesses), and (3) administrative powers. This latter constitutes the bulk of the work of the commission and is generally performed by the executive agent. It would include the establishment of quarantines, the inspection of public buildings, and the abatement of nuisances. A third classification might be according to the nature of the power exercised, as follows: (1) information and research, (2) licensing and examination, (3) prevention of disease.

Powers and
duties of
state boards
of health

The function of information and research originally involved little more than the collection of vital statistics, but it has been rapidly expanded. Special research laboratories are established in some states for the purpose of determining the cause and prevention of certain diseases. Laboratories are maintained

Information
and research

¹Modern experience shows that the health officer must be more than a physician and more than an engineer—he must have a training in many fields. Some educational institutions have a course of a special character for the training of health officers.

for the manufacture of vaccines and antitoxins and for bacteriological diagnoses for physicians. In many states the board of health is charged with the dissemination of information, since it has been found that health measures are of little avail without public coöperation. Bulletins are issued, lectures are given, and even moving pictures are utilized to bring home to the population the necessity for personal attention to health for the sake of the community. This function is rapidly increasing, and with its increase rises the problem of whether it should be undertaken by the educational department or the department of health.

**Examining
and licens-
ing func-
tions**

The second function deals not only with the examination and licensing of persons engaged in certain professions and occupations, which in some states is intrusted to special boards, but also with the setting up of standards of instruction for schools which undertake to prepare persons for certain occupations.¹

**Prevention
of disease**

The third and perhaps the most important function of the board of health is the prevention of disease. In general this may be accomplished in three ways: (1) through the establishment of a quarantine, either for the local unit or for the state itself; (2) by suppressing unsanitary conditions, which involves, perhaps, the inspection of the sources of water and food supplies, the supervision of sewage disposal, and so forth; (3) by the education of the public in sanitary and hygienic measures.

**The relation
between
the state
and local
authorities**

Until the middle of the nineteenth century care of the public health was intrusted almost entirely to the local authorities. As long as this was satisfactory there was little demand for state action or control except in the case of maritime quarantine. The growth of population and, particularly, its congestion made communicable diseases a greater menace, and the danger of epidemics spreading beyond a locality brought in the state authorities. At first state authority was exercised only in an advisory manner. Researches were undertaken, their results were communicated to the local boards, and pressure was brought to bear through the medium of publicity.

- A second step was to require reports from the local authorities.

¹Nurses, midwives, optometrists, etc.

A third step was the division of the states into sanitary districts and the appointment for each district of state inspectors, who had the power to investigate and coöperate with the local authorities and, in the more advanced states, to take direct action themselves. In about a dozen states the state board has power to remove the local health authorities. In general, however, with the exception of quarantine regulations, the state boards are still largely advisory or supervisory and have little mandatory power. The modern tendency, however, is to increase the power of the central authorities. In those states where this is done great satisfaction has resulted.

LABOR-LAW ADMINISTRATION

The departments of administration just described have been found in one form or another since the establishment of state and local government. The regulation of industrial relations and the whole law of labor is a modern development. Until well into the nineteenth century the doctrine of noninterference was firmly held throughout the United States. Business and industry and their relations to their employees were considered outside of the sphere of public regulation. Only in those industries which were affected with the public interest, like railroads and warehouses, did the state intervene, and then only to the extent of regulating the rates or prescribing the services. The state next attempted regulation of business for public safety and, finally, for the laborer himself.

Typical of the changed spirit are the laws which attempt to regulate industries on the grounds of health. The pursuit of certain industries in some states is absolutely forbidden; for example, the manufacture of matches out of white phosphorus. Other industries which are regarded as dangerous are subject to special laws limiting the hours during which the workman may be employed; for example, Colorado limits the number of hours for employment of miners underground. Other laws provide special regulations for different occupations; as, for example, the requirement that appliances shall be installed in certain industries to eliminate or diminish the harmful dust.

Changing
ideas con-
cerning the
sphere of
state regu-
lation

Regulation
of industries
on the score
of health

More general regulations are of the type which provide for the proper sanitary conditions for the employees, such as those which fix the number of cubic feet of air for each employee in order to prevent overcrowding, and the regulations which require the installation of proper toilet and sanitary appliances.

Regulation
of industries
on the score
of safety

Another class of labor laws deals with the safety of the employee. Among these may be mentioned the regulations requiring the installation of suitable fire-escapes, automatic sprinklers, and other devices to minimize the danger of fire. Another class of laws deals with the protection of the workmen against accidents and requires the installation of safety appliances and guards for moving or dangerous machinery.

Workmen's
compensa-
tion laws

In spite of these laws accidents happen. According to the old doctrines of English common law the employer's liability for these accidents was very strictly limited. He was not held responsible for accidents which resulted from the workman's own carelessness. Moreover, the workman was supposed to assume all risk of accidents for which the employer could not be held responsible on account of faulty machinery. Most far-reaching, however, was the fellow-servant rule, by which the workmen were supposed to assume the risk of accident resulting from the carelessness or negligence of their fellow employees. At the time when the English courts developed these doctrines manufacturing was in its infancy. It was often-times confined to the home of the employer, and the employers were few. In such conditions there may have been some justification for these rules. With the development of the factory system, however, necessitating the employment of thousands of workmen in a single factory who had little or no relation one with another and were unknown to each other, the fellow-servant rule seemed absurd. Moreover, an industrial accident—whether the result of the employer's negligence or the workman's carelessness or a totally unavoidable accident—prevented the workman from earning his wages and might possibly cause him or his family to become a public charge. To prevent this many state legislatures passed laws repealing the old English common law rules and holding the employer financially liable. In some states—for example, New York—these

laws were at first held unconstitutional, but by amendments to state constitutions and by the changed opinion of the judges almost all the states have been able to pass laws of this type. Practically every state requires the manufacturer to insure his workmen against accidents or else provides simple and direct methods by which an injured workman may obtain compensation. Manufacturers are now quite generally insuring themselves against such accidents, the cost being charged along with taxes, wages, and the other expenses of the business and ultimately added to the price of the article. This distributes the burden of supporting or compensating injured workmen throughout the entire community, instead of compelling the manufacturer to bear it all or forcing the workman or his family to become a public charge.

In some states the movement has gone still further, and commissions are appointed looking toward the establishment of some form of insurance against loss of time because of disease or sickness. So far no state has yet adopted such a law, although in 1919 in New York a bill for this purpose passed the senate, but did not come to vote in the assembly.

Health
insurance

The regulation of hours of labor began with limitations upon the hours at which women might work in factories or at certain employments. In many states these hours are limited to not more than forty-eight hours a week, or eight a day. In some states the night labor of women is prohibited. These limitations upon the hours of women's labor are absolute, and to employ them beyond the specified number of hours or during the prohibited times subjects the employer to a fine. Some states—for example, Oregon—have established the ten-hour day for men in all industries. This is not an absolute prohibition, however, since manufacturers may employ their workmen for more than ten hours, provided they give additional compensation. It has been noted, under the regulations for health, that in unhealthy and dangerous occupations the hours of workmen have long been limited.

Regulation
of hours
of labor

In most states there are regulations concerning the employment of children. The employment of children in certain occupations, such as mining, is absolutely prohibited in some

Child labor

states.¹ In others there is a minimum age, usually fourteen, below which children may not be employed in factory or mercantile occupations. Yet in other states children above fourteen but below a certain age, usually sixteen, may be employed for part-time work, provided they attend continuation schools for a certain number of hours a week. During 1919 Congress attempted to strengthen the hands of the states by the passage of the second child-labor law, which set a minimum age of fourteen for the employment of children in factories, of sixteen for mines and quarries, and a prohibition upon the employment of children in night work or for more than six days a week. To accomplish this Congress invoked the taxing power.

**Minimum
wages**

Fourteen states and territories have passed laws providing for the establishment of a minimum wage for the employment of women. In some states—New Jersey, for example—this wage is fixed by the legislature and is compulsory upon the employer. In Massachusetts and other states a commission investigates the occupation and recommends a minimum wage. Although the Massachusetts system is dependent for its enforcement upon publicity, yet there is no instance where the recommendation has not been complied with.

**Conciliation
and arbitra-
tion**

The relations of the employers to the employees have also been subjects of state legislation. The frequent occurrence of strikes and lockouts has led many states to adopt and establish boards of conciliation and arbitration, the purpose of these boards being largely remedial, although in some instances it is preventive. In the latter type an industrial dispute may be submitted to the board before a strike has been declared; the board hearing both sides may make recommendations. In the former type the board does not act until a strike has actually taken place.

**Administra-
tion of
labor laws**

This review of labor legislation is by no means comprehensive. Different states have at various times passed and are passing labor laws of all sorts. The whole system of labor legislation grew or developed piecemeal, and its administration bears evidence of such development. Some of the laws—for example, those regarding public health—were administered by

¹New Jersey and North Dakota.

the local and state boards of health. For other laws special factory inspectors were appointed, while still others (like the minimum-wage law) caused the creation of special commissions. Thus, not only is the administration of labor legislation shared, like other functions of state administration, between the local and state authorities but there are a multitude of independent, uncorrelated agencies engaged in such administration. In some states the general process of consolidation which has been noted in other fields of state administration has taken place in the administration of labor laws. Thus, in the Massachusetts reorganization act of 1919 five different agencies were consolidated in the department of labor and industries and were placed under a commissioner, aided by an assistant commissioner and three associate commissioners. There still remains a special department for industrial accidents, but the tendency toward consolidation is very strong.

AGRICULTURE

In some states the regulations and boards for the supervision and encouragement of agriculture are even more varied than those for the industrial wage-earners. It would be almost impossible to make a complete catalogue of all the agricultural activities in all the states, but certain activities may be enumerated: (1) Statistical, educational, and research. This group of activities includes the collection of statistics, the holding and supervision of farmers' institutes and fairs, the analysis of soils and fertilizers, the registration of live stock, and the study and suppression of animal and plant diseases. (2) Inspection. This work covers the inspection of dairies, dairy products, herds, and meat products, and the grading of cotton, fruits, and other crops. (3) Conservation. This includes the preservation and propagation of fish and game, the conservation of the natural resources (especially the forests), the drainage of swamps, and the establishment of projects for irrigation. (4) Supervision and examination. These functions include the supervision of public warehouses and markets, the regulation of cold storage, the examination and licensing of veterinarians.

Adminis-
trative
agencies

Like the labor laws, the laws concerning agriculture developed piecemeal, and frequently new officers or agencies were appointed for each law. The general tendency now is to consolidate and correlate these various activities in a single department. This was accomplished by the reorganization law of Massachusetts in 1919, by which a commissioner and an advisory board of six took over the administration of this most varied department. There still remains, however, in several states a department of conservation, which, in Massachusetts, has charge of matters connected with forestry, fisheries and game, and animal industry.

REGULATION OF CORPORATIONS

Supervision
of corpora-
tions

The power to create a corporation is a governmental power. Originally this was exercised by the state legislatures, which, by special acts, granted charters of incorporation to different groups desiring such a status. The decision of the Supreme Court in 1819 in the Dartmouth College case established the rule that a charter of incorporation was a contract and, once granted, could not be altered or amended except by mutual consent without violating the prohibition in the Federal Constitution. Many states at once placed restrictions in their constitutions, declaring that no legal charters could be granted unless subject to alteration or amendment by the legislature, and all states in one way or another exercised administrative control and supervision over certain types of corporations. As corporate organization became more and more common the demand for greater regulation and control grew stronger, until in most states corporations of all sorts are subject to some sort of supervision and corporations of certain types to constant and unlimited supervision and control. •

General
regulations
for corpora-
tions

Most states have abandoned the practice of granting charters by special acts of the legislature and have passed general laws by which charters are granted according to certain definite principles for certain purposes. The issuance of such charters of corporation was usually vested in the secretary of state. With the increase in the number of incorporations, however,

special agencies were created—first, a commissioner of corporations and then various commissioners to supervise and control certain definite types of corporations. There is no general type of administrative organization, yet without attempting to enumerate all the different varieties, the following classification will cover the most important classes of corporations and methods of control.

The business of life insurance and banking was among the earliest types of corporations subject to state regulation. In order to make certain that sound financial principles were adopted by these corporations, the state established elaborate laws regulating the organization, the class of securities in which the resources of the corporation might be invested, and the system of accounts which must be followed. The supervision of banks and insurance companies is constant and painstaking. It is generally under the direction of a superintendent of insurance or a commissioner of banks, assisted by a staff of examiners, who receive the reports of the institutions and sometimes make actual physical examinations and audit the books.

Banking
and
insurance

With the increase of corporations there has been an enormous development in the sale of the securities issued by these corporations—stocks, bonds, notes, and other obligations. In order to protect the investing public certain states, beginning with Kansas in 1911, supervise the sale of such securities, forbidding it unless an officer (in Kansas the bank commissioner) is convinced that the company has some tangible assets behind it and that the public has some information concerning it. This does not mean that the state in any way guarantees the securities of the company, but merely that the public is protected against the sale of worthless, fraudulent, or wildcat securities.

Supervision
of securities

The great development of the railroads, and the dependence of communities not simply upon them but upon urban means of transit, created a demand for state regulation in order that the public might receive adequate service at reasonable rates. The right of the state to regulate such utilities was upheld in 1876.¹ Closely allied with railroad regulation was the regulation

Regulation
of public
utilities

¹See *Munn v. Illinois*, 94 U. S. 113.

of warehouses and grain elevators, while in the cities the regulation of public utilities, like gas, electricity, telegraph and telephone companies, was undertaken.

Regulation
of railroads

All states have a railroad commission or commissioners. This agency is charged with the supervision of the railroads and in some cases with the regulation of the rates. More generally, however, the rates are fixed by act of state legislature or by the charters of incorporation. In some states, however, the railroad commission is given authority after investigation to fix reasonable rates. In so doing the railroad commission may come in conflict with the Interstate Commerce Commission of the United States. In such cases it has been held that while states might prescribe intrastate rates they had no control over interstate rates, and even the intrastate rates could not be determined to the disadvantage of the interstate rates.¹ When the railroads were operated by federal authority during the World War the states lost still more control over the regulation of rates, and even after the war the Interstate Commerce Commission, relying upon the Shreveport decision, fixed intrastate rates contrary to the desires of state railroad commissions and acts of state legislatures. In some states the regulation of railroads has developed so far as to supervise the character and the amount of securities which the railroads are allowed to issue and to make an appraisal of the physical value of their property. The reason for this is that such matters affect the determination of just and equitable rates.

Regulation
of other
public
utilities

Practically all the states have one or more commissions for the regulation of public utilities, such as gas, electricity, and street railways. These commissions may, like the Massachusetts Gas and Electric Lighting Commission of 1885, regulate the issuance of securities or prohibit the construction of unnecessary works, and have advisory powers concerning the rates charged for service. The Wisconsin law goes even further and allows the commission to make a physical valuation of the plants under its supervision. Some power is given these commissions to fix the rates which may be charged. By the reorganization act of 1910, Massachusetts consolidated the Public

¹See the Shreveport case (1914), 234 U. S. 342.

Service Commission and the Gas and Electric Light Commission into one department of public utilities. This commission consists of a board of five and exercises the functions of the previous boards.

Massachusetts reorganization act

OTHER DEPARTMENTS

It has been pointed out in previous sections that the states undertake certain important public works, like the construction of highways, the improvement of waterways, as well as the building and management of state institutions. This branch of administration involves technical, engineering, and business skill. In most states these functions were originally distributed among a variety of state agencies. The tendency now is to consolidate them into a single department, on the theory that the state acting through a single department can secure a higher grade of service and supervise its public works to better advantage. Without doubt this is generally true, yet cases are not wanting where special departments, because of their interest and zeal, have been fully as efficient as a single centralized department.

Public works

All the states have special departments of finance and taxation. The question of taxation, however, is closely connected with the legislative power of the state and will be treated in a special chapter.

Finance and taxation

The foregoing survey does not attempt to include all the varied branches of state administration. In many states special commissions or boards have been created for special purposes, like the building of a state capital or the consolidation of the state laws. There are art commissioners, city-planning commissioners, and supervisors of the officials of local areas. It would be almost impossible to enumerate all the permanent and special boards and commissions which are in existence. The number is extremely large, and their work is oftentimes uncorrelated and uncoordinated. The general tendency, however, is to consolidate and unify state administrative agencies; but although this has gone to a considerable extent in some states, the number of administrative agencies is still far too large and their functions are ill defined.

Miscellaneous

CHAPTER X

THE STATE LEGISLATURE

The importance of the state legislature

The state legislature occupies the most fundamental and important position in the framework of state government. It is the mainspring of the state activities. Its action must generally be invoked¹ in the revision of the state constitution; that is, amendments to the state constitution are framed and passed by the state legislature before being submitted to the people. Even the question of a convention to revise the state constitution must be considered in some form or another by the legislature. The state legislature is the lawmaking branch of the government. It controls the civil law; that is, it makes rules governing real and personal property, contracts, inheritance, corporations, and all other civil matters. It enacts the criminal law of the state; that is, it determines what actions of its citizens are subject to punishment by fine, imprisonment, or even death. It has supreme financial power in that it levies taxes and makes appropriations. Most important of all, the state legislature determines the use of the police power of the state; that is, it enacts regulations governing the health, morals, general welfare, and convenience of the citizens. This is a far-reaching power and is limited only by the specific prohibitions in state and Federal constitutions as interpreted and applied by the courts. The actions of the state legislature, as has been said, follow the citizen from his birth to his death, and even after death. His birth is registered by state law; his education is determined by state law; he is guarded and limited by state law in the occupations in which he may engage; his property is taxed, his marriage regulated, his savings protected, his life supervised by the police regulations made by

¹ Amendments proposed by the initiative do not as a rule have to be submitted to the legislature.

state law. If he commits a crime the law determines his punishment by fine or imprisonment or even by execution, while after his death the state officials supervise the execution of his will.

The state legislature has inherent legislative power. The Congress of the United States has only delegated power. By that is meant that Congress may legislate only in those fields which the Constitution gives to it. The state legislature, on the other hand, may pass any law, on any subject or in any field, which is not explicitly denied to it. Originally this field for state legislation was wide. Thus, in the original constitution of Massachusetts¹ the grant reads: "And further, full power and authority are hereby given and granted to the said general court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without. . . ." The Federal Constitution and the extravagant behavior of some state legislatures have led to the limitation of this wide field, but still the possible extent of state legislation is far wider than that granted to Congress.

Omnipotence of state legislatures

The first and most fundamental limitations upon state legislation are those of the Federal Constitution. These limitations are common to all states and are enforced by federal authority through judicial decision. They are to be found chiefly in Article I, Sect. x, where a state is prohibited from making a treaty, granting letters of marque or reprisal, coining money, emitting bills of credit, making anything but gold or silver legal tender, passing bills of attainder, ex post facto laws, or laws impairing the obligation of contracts, or granting titles of nobility. No state shall lay import or export duties or tonnage duties, or keep troops or ships of war in time of peace, or engage in war. The Thirteenth, Fifteenth, Eighteenth, and Nineteenth Amendments add other restrictions: slavery is forbidden by the Thirteenth Amendment; the power of the states to deny suffrage on account of race, color, previous condition of servitude, or sex is prohibited by the Fifteenth and Nineteenth Amendments; prohibition is established by the

Limitations upon state legislatures in the Federal Constitution

¹Article IV.

Eighteenth Amendment. The most far-reaching prohibition, however, lies in the Fourteenth Amendment. By this, citizens of the United States are declared to be citizens of the state in which they reside, and no state may abridge the privileges or immunities of such citizen, or deprive any person of life, liberty, or property without due process of law, or deny to any person the equal protection of the laws. The application of this amendment gives the Supreme Court of the United States the right to sit in judgment upon state legislation and makes it in many ways the censor of state laws. This amendment has profoundly altered the original Constitution. It was the longest step toward centralization and has proved to be the most effective check upon the legislation of the states. In recent years, however, the court is showing a tendency to accept the discretion of the state legislatures and to uphold laws passed under the police power, rather than to substitute its own point of view for that of the state legislature.

Limitations
in state con-
stitutions:

Each state sets some limits upon the powers of the state legislature. A comprehensive enumeration of these limitations would be impossible unless a digest were made of the constitution of every state. Nevertheless it is possible to group the more fundamental limitations into certain categories.

(1) The gov-
ernor's veto

In no state is the legislature the sole authority participating in the passage of laws. Everywhere the laws must be submitted to the governor for his approval. The governor's veto, how-

(2) Direct
legislation

ever, is not absolute, but may be overridden by the state legislature. With the adoption of the initiative and referendum the state legislature shares with the people the lawmaking power. In every state constitution there is a bill of rights

(3) Guar-
anteed per-
sonal rights

guaranteeing to the citizens the fundamental rights of person and property. These are usually found in the articles prescribing jury trial, the writ of habeas corpus, freedom of religion, speech, and press, and the provisions which declare that prop-

(4) Frame-
work of the
government

erty shall not be taken for public use without just compensation or by other means than due process of law. The framework of the government is prescribed by the state constitution and may not be altered by the legislature alone. In the more modern constitutions not only are the three great departments of the

state government provided for, but certain subordinate departments or commissions are established. Experience has shown that it is wise to restrict the financial power of the state legislature. In some states the kinds of taxes which may be levied are designated; in many, debt limits are prescribed as well as mandatory provisions for the payment of money borrowed by the state. Most state constitutions lay restrictions on the power of the legislature to interfere with local government. In some states home rule for municipalities is guaranteed in one form or another. In practically all modern constitutions there are special provisions regarding corporations, which provide that no special charters or special privileges shall be granted, and which subject corporations to supervision and sometimes deny to them some of the legal procedure which is guaranteed to natural citizens.

(5) The financial power

(6) Local government

(7) Corporations

Many state constitutions prohibit the legislature from passing special laws in any form whatsoever. Most state constitutions prohibit the enactment of special laws on certain specified subjects. The distinction between a general law and a special law is not always easy to perceive. A general law applies to all persons or things subject to the authority of the state, but a general law may also apply to classes of persons, or things, defined according to some essential characteristic, such as sex, age, or profession. For example, a law limiting the hours at which women might work in factories would be a general law. Or a law which compels anyone who practices law within the state to exhibit such qualifications as required by the examinations for the bar would also be a general law. A law, however, which exempted lawyers from taxation would be a special act, inasmuch as lawyers may be distinguished from others on the ground of profession, but this distinction has no relation to the duty of the payment of taxes.¹ The specified subjects on which special acts are generally prohibited are very numerous and various, but among them may be included divorce, court procedure, remission of fines, corporations, and county, town, and municipal affairs. The question

(8) Special laws

¹See P. S. Reinsch, *American Legislatures and Legislative Methods*, pp. 148-149.

Composition
of state
legislatures
The
bicameral
system

of special legislation concerning municipalities in contrast to "home rule" will be discussed at length in a later section.¹

The legislature of every American state is a bicameral body. The reasons for this are partly historical, partly theoretical, and largely practical. In most of the colonies the legislative assemblies were checked by the action of the governor's council, which, although primarily executive, acted as an upper house in legislation. With the adoption of the Federal Constitution, providing for a legislature composed of the House of Representatives and Senate, a strong influence was set at work. It is true that the jealousies of the state made the establishment of the Senate necessary, and no such reason compelled the establishment of a second chamber in the state legislature. Nevertheless the federal analogy has had a great influence in keeping the bicameral system unchanged in spite of certain defects which have been made manifest. Although there are no local units of importance and influence within the state corresponding to the states within the Union, yet there are entirely valid theoretical reasons for the establishment of a second chamber. Representative government unchecked represents simply the majority. Perfect representative government should represent all important classes within the state. The framers of the original state constitutions desired that property should not be at the mercy of the majority, who were largely propertyless. Thus they created an upper house or senate for membership in which higher property qualifications were required, and thus, by giving coördinate responsibility to both houses of the legislature, they hoped to insure for wealth an equal influence with numbers and to protect the propertied class against the radical legislation which they feared from the majority. With the abolition of property qualifications for the electorate the original purpose of a bicameral legislature has apparently disappeared, but with the massing of the population of the states in large cities a new justification for the bicameral system is put forward. In order that the state legislature shall represent all sections of the state, territorially considered, provisions are usually found

¹ See pages 378-392.

in state constitutions which make at least one house of the legislature represent territorial regions, while the other may represent the majority party.

The bicameral system is, moreover, justified on more theoretical grounds. It is held that consideration of measures by two separate bodies acting independently of each other and at different times will insure more careful legislation. If there be any distinct difference in the character of the membership, or the method of choice, or the length of terms of those two bodies, perhaps this may be true. At present, however, the qualifications for both houses are practically the same; there is no difference in the method of election. It is true that the members of the senate generally represent larger constituencies than do the members of the other house, but this difference is not of sufficient importance to justify in itself a second chamber. The growth of political parties and the perfection of the party organization generally result in the control of both houses of the legislature by the same party. The party program is more valued than the careful theoretical scrutiny each house is supposed to give, and measures under the pressure of party discipline are put through both houses with little regard to the double consideration the system is supposed to compel.

Theoretical
justifica-
tions of the
bicameral
system

In spite of the theoretical and historical advantages of the bicameral system certain evils have resulted. The senate, or upper chamber, is the smaller body. It therefore offers an easier field for political or private manipulation. In some states, at certain periods when corrupt influences are predominant, the will of the electorate has been thwarted by the manipulation of a few senators, thereby forcing a deadlock. At other times a deadlock between the house and senate has been broken only by means of a compromise, which was unsatisfactory to the electorate but less harmful to the interests which were fearful of legislative action. When the United States senators were elected by the state legislatures, state senators were subject to tremendous pressure from one candidate or another.

Dangers
of the
bicameral
system

In the eyes of many observers the bicameral system has not justified itself. The theoretical arguments for complete rather than mere majority representation are freely admitted. But it

Proportional
representa-
tion

is hoped to obtain this more perfect representation through some system of preferential, cumulative, or proportional voting. Illinois, while not abolishing the bicameral system, has adopted a method of cumulative voting.¹ By this the house of representatives consists of three times the number of the members of the senate. Representatives are chosen from senatorial districts, and each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or he may distribute his votes among the candidates. This has insured minority representation. It is not proportional representation, which has been previously described.² No state, however, has yet adopted such a system.³

Legislative
apportion-
ment

The question of the apportionment of state representatives and senators is an important one.⁴ The constitutions of all the states recognize two principles—population and territory. In few states are the representatives distributed according to the unchecked rule of either population or territories. Restrictions are placed, in most states, upon representation by population, and territorial representation receives special favor. In all states the upper house is smaller than the lower, and in most states there is a different basis of representation for the two houses.

The county is the unit of representation for the lower house outside of New England. In some states each county constitutes

¹See B. F. Moore, "The History of Cumulative Voting and Minority Representation in Illinois" (1870-1908), *Illinois University Studies*, 1909.

²See pages 102-104.

³The proposals for a model state constitution put forward by the committee on state government of the National Municipal League advocate a unicameral state legislature chosen by proportional representation. *National Municipal Review*, Vol. IX, p. 711.

⁴See P. S. Reinsch, *American Legislatures and Legislative Methods*, chap. vii; A. N. Holcombe, *State Government in the United States*, pp. 242-248. P. S. Reinsch, *Readings on American State Government*, pp. 120-126, gives the speech of Elihu Root in the New York Constitutional Convention of 1894; pp. 127-129, the message of Governor McLean of Connecticut. G. H. Haynes, *Representation in State Legislatures*, presents an exhaustive study of the basis of representation, the organization of the legislatures, the personnel of the legislators, and the party strength of the legislatures of 1899. These studies also appear in the *Annals of the American Academy of Political and Social Science*, Vol. VI, p. 254; Vol. XV, pp. 204, 405; Vol. XVI, pp. 93, 243.

a separate representative district. The total number of representatives to be chosen is distributed among the counties, theoretically in proportion to population, with the proviso that no county receive less than one. The representatives are chosen upon a general ticket from the county at large. This method is followed in several of the Northern and Middle Western states; for example, in New Jersey, Ohio, and Iowa. In less populous states containing numerous counties this would make the house too large; hence in some such states sparsely settled counties are grouped together, while a more populous county is allowed a representative of its own. In other cases the entire state is divided into electoral districts, theoretically of contiguous territory and equal population, and each district returns one member. There is a regulation which provides that each county shall contain at least one district. In other cases counties are combined or subdivided in order to form electoral districts. The basis of representation in New England states is the town, but their method of apportionment varies. In Massachusetts the towns and cities are grouped or divided as is necessary in order to make approximately equal, contiguous districts; in Connecticut and Vermont each town or city receives a fixed number of representatives and in Vermont an equal number of representatives irrespective of its population.

Unit of representation in the lower house:
(1) Outside of New England

(2) In New England

The basis of representation for the senate is more uniform. In most states single-member districts are created by dividing or combining counties. But in Ohio the larger communities, which would be entitled to elect more than one member, are not divided into single-member districts, but choose two or three according to population. In some states each county is entitled to an equal number of representatives irrespective of its population.

Unit of representation for the senate

Legislative apportionment has accomplished what it intended. With the exception of Connecticut and Vermont the lower house represents the majority of the population. The upper house also represents the majority. Since the members of the upper house are chosen from larger districts, the effect of plurality election is to increase the strength of the majority

The results of legislative apportionment

and to diminish the representation which the minority might gain by the use of smaller districts. The majority gains at the expense of the minority in yet another way. This is by means of gerrymandering. The purpose of a gerrymander is to enable the majority to carry the greatest number of districts with the fewest number of votes, or, to put it in other words, to have as large a minority in each district as is compatible with the safety of the majority. Although most state constitutions provide that the electoral districts shall be substantially equal in population and composed of contiguous territory, the state legislature to which the construction of these districts is confided interprets "substantially equal populations" with the greatest liberality, and it is not difficult to find in almost any state grave inequalities of population. The phrase "contiguous territory" has also been interpreted most grotesquely.¹

Discrimination
against
cities

The bicameral system makes it easy to discriminate against cities. This is accomplished in various ways. According to the Connecticut constitution the lower house represents the towns without regard to numbers. Thus the four smallest Connecticut towns, with a total population of 1567, are represented by 5 members; but the four most populous cities, containing a population of 309,982, have only 8 members, although, on the basis of population, they would be entitled to 87.² A similar condition exists in Vermont. In New York the constitution provides that each county except Hamilton shall have at least one member in the assembly (as the lower house is called), with the result that about one fifth of the districts fall below the ratio established by dividing the population by one hundred and fifty, the number of members allowed for the assembly. As a result the smaller counties are over-represented, while almost all the larger counties are under-represented. Not content with this discrimination against the cities, the New York constitution provides that no county, no matter how large, shall have more than one third of the senators, and that no two

¹For examples with illustrations see J. R. Commons, *Proportional Representation* (2d ed.), p. 55, and P. S. Reinsch, *American Legislatures and Legislative Methods*, pp. 200-204.

²C. A. Beard, *American Government and Politics* (3d ed.), p. 521.

adjoining counties or counties separated only by public waters shall have more than one half of the senators. This is a direct discrimination against New York City.

Since the constitution vests in the legislature the apportionment of the senators and representatives, the courts have generally held that this is a discretionary act which is not subject to judicial review. Exceptions, however, are to be found in Michigan (1892), Wisconsin (1892), and Indiana (1892).¹ But in general the legislatures are given free hand in apportioning the representatives and senators.

Attitude of
the courts
on legisla-
tive appor-
tionment

The lower houses in state legislatures vary in size from 413 (New Hampshire) to 35 (Delaware). The senates vary from 67 (Minnesota) and 51 (Illinois and New York) to 18 (Utah) and 19 (Arizona). In general, it might be fair to say that the lower houses of the legislature are two or three times as large as the upper houses.²

Size of state
legislatures

In seven states there are annual sessions of the state legislature.³ In Mississippi and Alabama the legislature meets in regular session only once every four years. Biennial sessions are the rule in all others. In New York and New Jersey the representatives serve for a single year, in the great majority of the other states for two years.⁴ Senators in the New England states have the same length of term as the representatives—two years. This is also true in a few other states.⁵ In some of the Southern states the senators and representatives serve for four years.⁶ Elsewhere the senators are elected for four years and the representatives for two, except in New Jersey, where the term of the senators is three years and that of the representatives one. It is thus seen that there is a general tendency to give the senators longer terms and hence, in part, to make

Sessions of
the state
legislature

Length of
terms

¹See P. S. Reinsch, *American Legislatures and Legislative Methods*, pp. 204-212, with references to cases.

²See tables on pages 204-205.

³Connecticut, Georgia, Massachusetts, New Jersey, New York, Rhode Island, and South Carolina.

⁴In Alabama, Louisiana, and Mississippi for four years.

⁵Arizona, Georgia, Idaho, Michigan, Nebraska, North Carolina, Ohio, South Dakota, Tennessee, and Utah.

⁶Alabama, Louisiana, and Mississippi.

STATE LEGISLATURES¹

STATE	NUMBER OF MEMBERS		LENGTH OF TERM (YEARS)		REGULAR SESSIONS	LIMIT OF SESSION (DAYS)	SALARY (DOLLARS)
	Senate	House	Senate	House			
Alabama	35	106	4	4	Quadrennial	50	4 per day
Arizona	19	35	2	2	Biennial	60	7 per day
Arkansas	35	100	4	2	Biennial	60	6 per day
California	40	80	4	2	Biennial	— ²	1000 regular session 10 per day extra session
Colorado	35	65	4	2	Biennial	90	1000 per session
Connecticut	35	258	2	2	Biennial	5 months	300 per year
Delaware	17	35	4	2	Biennial	60	10 per day
Florida	32	77	4	2	Biennial	60	6 per day
Georgia	51	103	2	2	Annual	50	7 per day
Idaho	44	67	2	2	Biennial	60	5 per day
Illinois	51	153	4	2	Biennial	None	3500 per biennium
Indiana	50	100	4	2	Biennial	61	6 per day
Iowa	50	108	4	2	Biennial	None	1000 regular session 10 per day extra session
Kansas	40	125	4	2	Biennial	None	3 per day
Kentucky	38	100	4	2	Biennial	60	10 per day
Louisiana	42	120	4	4	Biennial	60	5 per day
Maine	31	151	2	2	Biennial	None	400 per session
Maryland	27	102	4	2	Biennial	90	5 per day
Massachusetts	40	240	1	1	Annual	None	1500 per year
Michigan	32	100	2	2	Biennial	None	800 regular session 5 per day extra session

¹ This table is adapted from the American Year Book (1919), pp. 217-218.² Split session: first part, 30 days; recess, 30 days; no limit to second part.

STATE	NUMBER OF MEMBERS		LENGTH OF TERM (YEARS)		REGULAR SESSIONS	LIMIT OF SESSION (DAYS)	SALARY (DOLLARS)
	Senate	House	Senate	House			
Minnesota	67	132	4	2	Biennial	90	1000 per session
Mississippi	45	150	4	4	Biennial	None	500 per session
Missouri	34	142	4	2	Biennial	70	5 per day
Montana	41	95	4	2	Biennial	60	10 per day
Nebraska	33	100	2	2	Biennial	60	600 per session
Nevada	17	37	4	2	Biennial	60	10 per day
New Hampshire	24	413	2	2	Biennial	None	200 per session
New Jersey	21	60	3	1	Annual	None	500 per year
New Mexico	24	49	4	2	Biennial	60	5 per day
New York	51	150	2	1	Annual	None	1500 per year
North Carolina	50	120	2	2	Biennial	60	4 per day
North Dakota	49	113	4	2	Biennial	60	5 per day
Ohio	33	124	2	2	Biennial	None	1000 per year
Oklahoma	44	111	4	2	Biennial	60	6 per day
Oregon	30	60	4	2	Biennial	40	3 per day
Pennsylvania	50	207	4	2	Biennial	None	1500 per year
Rhode Island	39	100	2	2	Annual	60	5 per day
South Carolina	44	124	4	2	Biennial	40	200 per session
South Dakota	45	104	2	2	Biennial	60	5 per day
Tennessee	33	100	2	2	Biennial	75	4 per day
Texas	31	147	4	2	Biennial	None	5 per day
Utah	18	46	2	2	Biennial	60	4 per day
Vermont	30	247	2	2	Biennial	None	4 per day
Virginia	40	100	4	2	Biennial	60	500 per session
Washington	42	97	4	2	Biennial	60	5 per day
West Virginia	30	96	4	2	Biennial	45	4 per day
Wisconsin	33	100	4	2	Biennial	None	500 per session
Wyoming	27	57	4	2	Biennial	40	8 per day

the upper house in some degree different from the lower house. It may be questioned, however, whether these longer terms actually make the senators more conservative and less subject to immediate demands of popular opinion, but it may be justified as carrying out one of the theories of the bicameral system.¹

**Length of
sessions**

Fifteen states set no limit to the length of the regular session of the legislature. In other states it is limited—in the majority, to sixty days.

Salaries

The compensation paid the legislators varies from \$200 a session in New Hampshire and South Carolina to \$3500 for two years in Illinois. Massachusetts, New York, and Pennsylvania pay \$1500 per year. The majority of the states, however, while limiting the length of the session, compensate the members on a per-diem basis. This varies from \$3 a day in Oregon and Kansas to \$10 a day in Delaware and Kentucky, the average being between \$5 and \$6 a day.

¹See pages 198–199.

CHAPTER XI

THE LEGISLATURE AT WORK

The members of the state legislature are fairly representative of the average American. In most houses there is an over-representation of the legal profession. This, however, may be partly explained by the fact that many young lawyers enter political life as a means of advancement in their chosen career. Lawyers of great eminence or wide practice are seldom found. The laboring class is hardly represented. On the other hand, representatives of the farming class are numerous. Many of the members have had some experience in politics, although this is generally confined to holding town, county, or city offices. The majority of the members are not graduates of colleges and seldom have education other than that obtained in the lower public schools, although the lawyers add to this their professional training.¹

Organiza-
tion and
character
of state
legislatures

In all states the house of representatives chooses its own officers, and in some states a similar privilege is given to the senate. However, in many states the lieutenant governor acts as the presiding officer of the upper house.

Officers

The most important officer in the state legislature is the speaker of the house of representatives. Nominally he is chosen by the house; practically, as in all American legislatures, he is elected by the caucus of the party in the majority and this selection is ratified formally by the house. Many elements enter into the choice of the speaker. Personal popularity counts a great deal; political influence counts even more. Most essential of all, however, is the ability to work with the approval of a group of influential members. These unofficial

The speaker
of the house

¹See Samuel P. Orth, "Our State Legislatures," in *Atlantic Monthly*, Vol. XCIV, pp. 728 ff. This is also reprinted in P. S. Reinsch, *Readings on American State Government*, p. 41; see also G. H. Haynes, *Representation in State Legislatures*.

leaders are found in the legislature of every state and attain their positions partly through native ability, partly through the backing of political organizations, and in some cases through length of service. They have influence over the other members of the legislature and, together with the speaker, practically determine the course of legislation. Not infrequently it happens that the candidate for speaker agrees to appoint these leaders to the chairmanships of important and influential committees, thus satisfying their ambitions and obtaining their support for his own election. The speaker and this little group are generally known as the "organization."

The powers
of the
speaker:
(1) Recognition

Aside from personal influence the speaker derives his power from five different sources. First, it comes from the prerogative of recognition. According to the rules of all state legislatures no member may take part in debate or introduce any measure unless recognized by the speaker. Thus, unless the speaker wills, a member may be condemned to absolute and ineffectual silence. Recognition is one of the most powerful weapons in the speaker's armory. As a by-product of recognition comes the control over what the member shall say or do. In utilizing this the speaker may ask, "For what purpose does the gentleman rise?" thus compelling the member to disclose his plan, and the speaker may deny recognition unless he approves.

(2) Rulings

The speaker decides all points of order. It is obvious that no legislative assembly can proceed without rules. It is the speaker's function to see that the business of the house proceeds according to these rules. A variation from the rules is a cause for objection or for points of order made by members of the house. It is the speaker's function to determine whether or not the procedure is actually in accordance with the rules. The speaker is not simply an impartial presiding officer—he is the product of the party system and is the chief party leader in the house. Thus, not infrequently it happens that he decides points of order in the interest of his party. Of course it is perfectly allowable for any member to appeal to the house from the ruling of the speaker, but since the speaker represents the majority party in the house his ruling is generally sustained. The speaker may very effectually control the organization of

the house by determining the presence of a quorum or by refusing to put dilatory motions or to allow obstructive tactics. In some cases he has arbitrarily exercised these powers and still more arbitrarily refused to allow appeal from his decisions.

All committees of the house are appointed by the speaker. This, next to recognition, is his most powerful method of rewarding his supporters and punishing his opponents. As is expected, the committees of the legislature are partisan committees, controlled by the party in majority. The speaker goes even further and selects as chairman of the committee not simply a member of his party but one of his supporters, who, if not a member of the organization, holds ideas pleasing to the speaker and agrees with him in the legislation which is deemed wise for the house to undertake. Members who are independent or who defy the speaker find themselves upon unimportant committees, and their measures, when referred to committees controlled by the speaker and his friends, have little chance of passage. (3) Appoint-
ments

Another prerogative of the speaker is that of referring to the appropriate committees the multitude of measures which are introduced. The speaker is thus in a position to refer an objectionable measure to a "safe" committee; that is, a committee composed of his friends and supporters. It happens not infrequently that committees composed of able and independent members find little to occupy their attention except routine business of a nonpartisan character, while seemingly insignificant committees are intrusted with the determination of measures of great importance in which the organization is vitally interested. (4) Refer-
ence

In some but by no means all state legislatures there is a committee on rules. This committee is nominally charged with proposing amendments to the standing rules of the house; practically it determines the order of business. This is done through the means of introducing special rules which facilitate the consideration of business favored by the organization and thus prevent the consideration of business not so acceptable. (5) Com-
mittee on
rules

Both houses of the state legislature have sergeants at arms, who are charged with keeping order and, in some cases, with Other
officers

the payment of the members; secretaries or clerks, who keep the journal and records of the body; and other subordinate officials. All these officers, although nominally chosen by the senate or house, are actually picked by the caucus of the party in the majority.

The
committee
system

The mass of legislation which is introduced into state legislatures necessitates some preliminary consideration by committees. The power and influence of these committees vary greatly in different states, but in general, according to Professor Holcombe,¹ they may be brought under the following classification, based on the powers which the committees actually exercise.

The Massa-
chusetts
committee
system

In Massachusetts and a few other states the committees have little independent power. Their only important privilege is that of examining the measures which are referred to them for consideration. By the rules of the house they are obliged to report to the house every measure which has been referred to them with the recommendation that it pass or do not pass, or with amendments. It is the custom for the committees to hold public hearings upon the measures which are referred to them and thus to give the proponents and opponents of the measure an opportunity to state their views. Moreover, since any person may present a measure to the Massachusetts legislature by obtaining the indorsement of a single member, the legislature is most open to popular opinion. No committee has any special privilege, and the reports of all committees are acted upon in the order in which they are received unless changed by a four-fifths vote of the house. Thus, in Massachusetts the power of the organization is reduced to its lowest terms, and every measure which has been introduced is given an opportunity to be heard. In addition, there is established a system of joint committees of house and senate which is a great saving of time for both the legislators and the proponents of a measure. The Massachusetts system, however, is extravagant of time. The sessions of the legislature generally occupy from five to six months, and the fact that the committees must report every measure referred to them prevents the smothering

¹State Government in the United States, pp. 253-261; P. S. Reinsch, *American Legislatures and Legislative Methods*, chap. v.

of foolish bills and compels the legislature to take time to kill measures which ordinarily would receive but short shrift at the hands of a committee.¹

In most states the committees have more power than is allowed them in Massachusetts. The committees in these states are privileged to report or not to report a measure, to hold public hearings, or to consider the measure in private. Thus it happens, perhaps fortunately, that a great majority of the measures which are introduced never reach consideration by the legislature, but are buried in committees. This is advantageous for most measures, while it gives the opportunity for the organization to smother a measure which is unacceptable to it. It is true that in many states where this system prevails the house, by an extraordinary vote, may discharge the committee from consideration of any measure and thereby bring it directly before the house, but there are great obstacles in the actual working of this device.

The normal
committee
system

The chairman of a committee of this type occupies a privileged position and exercises extraordinary prerogatives. The committee meets at the call of the chairman, and thus committee action may be prevented by the very simple device of not calling a meeting.² The chairman, moreover, usually has it in his power to determine whether public hearings shall be held or not. When it is remembered that the chairmen of committees are the supporters of the speaker and members of the organization, it can be clearly seen to what an extent the organization actually controls the legislative product.

Chairman
of the
committee

Furthermore, in committees of this type certain committees are specially privileged in making reports and thus can bring their business directly before the house at any time. In states where this procedure is in vogue the duration of the session is usually limited. Hence there is a great pressure in the last days of the session, and committees favored by the rules, or

Privileged
committees

¹ For a full description of the legislative procedure in Massachusetts see L. A. Frothingham, *A Brief History of the Constitution and Government of Massachusetts*.

² In some states—Illinois, for example—50 per cent of the committee may call a meeting.

committee chairmen favored by the speaker, can force through their business, while others are unable to gain consideration. The system of joint committees is seldom used in the normal system, and as a result different measures or the same measure varying in detail may be passed by the two houses.

Conference
committees

To compromise these differences a joint committee of conference is appointed. This joint committee of conference, under the pretense of arriving at a compromise, may practically rewrite a measure which has been passed by both houses. It is true that the work of the committee of conference must be ratified by both houses, but because of pressure of business and political influence this is generally done with little question. Illinois may be taken as a state where this type of committee organization is seen at its highest development, although the abuses which have been mentioned may be found in other states as well.¹

The
New York
system

What Professor Holcombe characterizes as the New York system is the application to state legislatures of the method which existed in Congress a decade ago—the system where the speaker is the keystone and exercises to a high degree all the powers which have been enumerated. In coöperation with the committee on rules and the chairmen of the other important committees, he absolutely controls the procedure of the legislature and the legislative product. It is the organization carried to its highest power. It has all the defects which organization rule must have, but it has the advantage of fixing the responsibility very definitely. In the Massachusetts system there is little or no responsibility. This is especially true when it is remembered that party voting in state legislatures is less frequent than in other legislative assemblies. In New York the speaker and the chairmen of the committees chosen by the party caucus are actually responsible for the action of the legislature. This responsibility is both positive and negative. They can control the time and procedure of the legislature and thus can be held responsible for the failure to pass any measure.

¹ See C. L. Jones, *Statute Law-making in the United States*, pp. 18-19; also Nebraska Legislative Reference Bureau, *Bulletin No. 3*, "Legislative Procedure in the Forty-eight States," p. 217.

Negatively, through the same means, they can prevent the passage of any measure. The great defect of the New York system is that the legislature may be responsive, not to popular opinion, but to the dictation of party leaders. When the power of the party organization in the nomination and election of candidates is remembered, it will be seen how far the New York system may depart from popular democratic government.

The problems and functions of a state legislature may be considered under four heads: what the law shall be, on what basis the law shall be made, what form the law shall take, by what process the law shall be enacted.¹

The
legislative
problem:

The determination of the legislative program, or what laws shall be passed, is set forth in the platform of the party. Theoretically a party platform promises legislation upon certain subjects, and the voters by the election of the party members indorse and adopt this program. Actually, however, as has been pointed out, party platforms are very general and are designed to attract voters rather than to set forth matured programs. It is true that in some instances a party will promise legislation of a particular sort. In such instances the party platform fulfills its theoretical function. But, as President Lowell has pointed out,² party votes are not so frequent in state legislatures as is ordinarily expected. Machine or boss control there may be, but, as has been shown again and again, this control is sometimes bipartisan. If the party seldom determines what the law shall be, leadership must be looked for elsewhere. This is found more and more frequently in the governor. The governor is in many ways the third house of the legislature, and by means of his messages and his vetoes is frequently able to control the procedure of the legislature and to determine its product.³ For perfect harmony the governor

(1) What
shall be
the law?

¹Professor Holcombe has well classified these functions as selection, collection of information, drafting, and consideration, in "State Government in the United States," pp. 268-272.

²See Report of the American Historical Association, Vol. I, pp. 319-544, and "The Government of England," Vol. II, p. 91, which gives a table of the party votes in Illinois, Massachusetts, New York, Ohio, and Pennsylvania.

³See pages 135-139.

and the organization—that is, the speaker and his supporters in the legislature—must be of the same party or of the same branch of the party.

(2) On what basis shall the law be made?

[Investigating committees]

[Public hearings]

[Report of administrative officer]

Having determined what shall be the subject of legislation, the next problem is to obtain information concerning these subjects. This is done in various ways. The most formal and effective method is by an investigation of a committee or commission either appointed by the governor or chosen by the legislature. This commission often exercises quasi-judicial power and may summon witnesses and take testimony under oath. An example of a proceeding of this sort is the insurance investigations held in New York in 1905. As a result of these investigations the laws governing insurance companies were revised and a new statute enacted. Less formal methods are the public hearings of an ordinary legislative committee. Sometimes the information upon which the law is framed is obtained from the report of some administrative officer who is an expert in his particular field. For the great mass of legislation, however, little investigation is attempted and less information sought. A law is introduced and, if accepted by the committee and reported to the house, is generally passed. In only a few states are the committees compelled to obtain enlightenment by public hearings.

[The lobby]

The most sinister method of obtaining information is by means of the lobby. The lobby may be defined as a group of persons employed to give information to the legislators. This definition, however, need not connote anything improper,—any citizen or group of citizens may, with all legitimacy, give information and urge the legislators to adopt or to oppose certain measures,—but in its usual sense the lobby means a group of agents who are paid by persons interested to gain the support of the legislators for certain acts or to prevent the passage of measures deemed harmful to them. Even in this sense the lobby is not necessarily an evil. A college, a bank, or a labor union may with perfect propriety employ counsel to state the reasons for or against the passage of certain legislation. Should the activities of lobbyists of this last type

be confined entirely to the public hearings of committees, to the preparation of briefs and printed documents, little exception could be taken to them, save that the longest purse would be able to obtain the most assistance from such outside agencies. When, however, the lobby attempts to influence the legislator in secret ways by means of promises of reward, financial or otherwise, it becomes a sinister and corrupt institution. Twenty years ago the influence of lobbies was extremely powerful in many states and corruption was widespread. When it was realized that many of the legislators owed their allegiance not to the electorate or to their party, but to a legislative agent who practically controlled their vote, measures were taken to check this parasite. Moreover, the interests employing lobbyists not infrequently found that the methods used only whetted the appetites of the legislators and the lobbyists themselves. Instances are not wanting of lobbyists who had hostile legislation introduced in order that they might show their employers how it might be defeated.¹

Suppression of a corrupt lobby is extremely difficult. In 1890² Massachusetts attempted to deal with this problem, but not very successfully. Lobbyists were classified as legislative counsel who were employed to make oral arguments before committees and as legislative agents who were used to interview individual legislators. Both classes were required to register with a sergeant at arms, stating their names and employers and the bills in connection with which they were employed. After the close of each session they were required to state the compensation they had received for their services. Their employers also were obliged to file the amount of money paid for the purpose of influencing legislation. About all this plan accomplished was to make public the names of lobbyists and to inform the public thirty days after the session how much money had been spent. Similar plans were adopted in Maryland and in Wisconsin. Governor La Follette, of the latter state, in 1905 recommended that hired lobbyists be forbidden to attempt

[Regulation
of the
lobby]

¹ See page 222.

² Massachusetts Acts and Resolves, 1890, chap. 456.

personally and directly to influence any member of the legislature.¹ This drastic measure, however, was not adopted. Lobbies are still maintained in the legislatures of most of the states, but of recent years public opinion has prevented some of their most shameless actions.

[Legislative
Reference
Bureau]

In 1901 the legislative reference department of the Wisconsin Library Commission was established.² One of the purposes of this department was to give the legislator the information which the lobbyist had frequently furnished him. When it is remembered that most members of the state legislature are politicians but not experts in lawmaking, it can be seen that dependence on some outside source is necessary. This outside aid was frequently given by the lobbyist, who not only prepared measures in which his employers were interested but sometimes, as a means of winning the favor of a legislator, drafted a bill in which the latter was interested. The lobbyist at his best was a trained expert, the legislator an honest but uninformed person attempting the complicated process of legislation. The legislative reference bureau, particularly in Wisconsin, gathers information on any subject which the individual legislator desires. This is done by clerks and experts who keep files of the statutes of other states and the laws of other countries. The bureau goes so far as to prepare arguments in favor of the proposed legislation. In other words, it places at the disposal of the legislator the information on which to base not simply the introduction of his bill but the arguments necessary for its passage. In addition to this service the bureau keeps an elaborate file of statutes and information, carefully indexed and digested. Many states have established legislative reference bureaus, but in few has their work been expanded as in Wisconsin. Generally their activity involves little more than bill-drafting (which will be discussed later), or at most

¹His message to the legislature is to be found in P. S. Reinsch, *Readings on American State Government*, pp. 81-84.

²For a description of the work of this department see an article by Charles McCarthy in the *Bulletins of the Wisconsin Legislative Reference Department*, 1908. This is reprinted in P. S. Reinsch, *Readings on American State Government*, pp. 63-74.

the examination of bills and amendments in order to avoid repetitions and unconstitutionality and to insure consistency with existing legislation.¹

Drafting bills is a difficult and technical task. The average legislator is generally unable to draft a bill which will successfully express his ideas, and as a result the statute books are full of hastily and ill-drawn measures which do not express the intention of the author. In addition to the difficulty of making the bill express the author's desire, care must be taken that it is in harmony with previous legislation. In some states there is a special drafting bureau whose function it is to put the ideas of the legislator in correct form and in harmony with previous legislation. In some states this is almost the sole function of the legislative reference bureau. Even in the states where such aid is given, the legislators are slow to take advantage of it.

The amount of business considered by the state legislatures is enormous. In the five years from 1899 to 1904 the total number of acts passed by American state legislatures was 45,552.² In the single year 1915 forty-seven states adopted 16,222 acts and resolves.³ In the twelve largest states more than 22,000 measures were introduced.⁴ Professor Orth⁵ reports that one legislature which sat for one hundred and thirty-two days passed 448 general laws, 328 local laws, and 62 joint resolutions. One half of these, however, were passed during the last fifteen days. On the last day 70 general laws, 17 local laws, and 6 joint resolutions were passed; on next to the last day, 59 general laws, 20 local laws, and 1 joint resolution, or a total of 173 enactments in two days. Since the legislature sat only twelve hours each day, each of these measures was passed at the rate of one every eight minutes. During

(3) In what form the law shall be [Bill-Drafting Bureau]

(4) By what process the law shall be enacted
Legislative procedure:
(1) Mass of business

¹ See *American Political Science Review*, Vol. X, p. 110, for a description of the bureaus then existing.

² P. S. Reinsch, *American Legislatures and Legislative Methods*, p. 300.

³ A. N. Holcombe, *State Government in the United States*, p. 240, quoting the Report of the Committee on Noteworthy Changes in Statute Law to the American Bar Association (1915), p. 57.

⁴ A. N. Holcombe, *State Government in the United States*, p. 249, quoting the official *Index to State Legislation*, Vol. I, 1915.

⁵ "Our State Legislature," in *Atlantic Monthly*, Vol. XCIV, pp. 728 ff.

the last night of the session of the New York Assembly in 1921, laws were passed at the rate of two a minute. Similar statistics might be made for the last days of the legislatures whose sessions are limited by the state constitutions, and even in those states with unlimited sessions the last days are hurried. This volume of legislation requires special rules and procedure to regulate and facilitate consideration and passage.

(2) Classification of business

All measures are classified and referred to the appropriate committees for consideration. This classification, as well as the number of committees, varies in different states, but the general rule prevails in all states that no measure will be considered by the house until examined by a special or standing committee.

(3) Order of business

In all legislatures the order of business is prescribed by the rules. In some states the rules are extremely simple, and the procedure is determined by the order in which the committees reports. In other states special committees receive special privileges and are given priority in making their reports. This is true of the committees recommending appropriations and of conference committees. In some states the committee on rules may alter the standing orders and determine the succession in which the committees may report.

(4) Limitations on debate

All state legislatures limit the freedom of debate. These limitations may be concerned with the number of times or the length of time a member may speak, and debate may be cut off entirely in the case of certain motions like the motion to adjourn. In some legislatures, as in Congress, a motion may be passed cutting off the debate on any question. This is known as the "previous question" and forces the legislature to vote at once upon the main question before it without further debate or consideration.

Steps in legislation:

(1) Introduction

The actual procedure of state legislation varies greatly in the individual states, but it generally has certain common characteristics.¹ The first step is the introduction. In theory the member introducing a measure must gain the recognition of the speaker and the bill must be read by title. Practically,

¹ See P. S. Reinsch, *American Legislatures and Legislative Methods*, chap. vi.

however, in many legislatures, a bill is introduced by the simple process of dropping it into a box, indorsed with the name of the member introducing it. The introduction of the measure and the reading by title is known as the first reading. In some states the second reading follows immediately after the first reading. In others, by the state constitution, this must take place upon a later day. Upon the second reading the bill is referred to the appropriate committee for consideration. This is done by the speaker on the basis of the title of the bill. As has been pointed out, however, the speakers sometimes refer bills which they wish to suppress to committees they can easily control. Bills involving the program of the organization are always taken care of by organization committees.

(2) First reading

(3) Second reading

(4) Reference to a committee

In the majority of the states the committees may do what they wish to the bills referred to them for consideration. They may kill them, amend them, hold public hearings upon them, or discuss them in private. In Massachusetts, however, they must report a decision recommending some action, even that the bill should not pass.¹

(5) Consideration by the committee

The next stage is the report of the committee. Not all states compel such a report, but where it is made, it is usually with the recommendation that the bill be passed or that the bill be not passed, with or without amendments. In the report stage a motion may be made to recommit the bill to the committee. This may be with instructions to alter it, or it may mean a simple and painless death for the measure.

(6) Report of the committee

The bill is then ordered to be engrossed. This means that a fair copy of the bill is made, great care being taken that it is in the exact form in which it was accepted by the house and that it incorporates the various amendments. The process of engrossing is usually carried on by clerks, supervised, however, by the committee on engrossing bills. When that is done the bill is reported to the house and read the third time and, if accepted, is declared passed.

(7) Third reading

After being passed by one house it is sent to the other, where substantially the same steps are taken. If the bill is amended or in any way altered in the second house a conference

(8) Consideration by the other house

¹See page 210.

committee is usually appointed to bring about a compromise between the two legislative branches, and its work is submitted to each house for acceptance.

(9) Enroll-
ing

When the bill is finally passed by both houses it is sent to the committee on enrolled bills, which supervises the making of the final copy. This is signed by the presiding officers of each house. The enrolled bill, so signed, is then sent to the governor for his approval. If he approves the bill he signs it, and it is deposited with the secretary of state, while the house in which it originated is informed of the governor's act by a message. If the governor disapproves of the bill, he returns it to the house of its origin with a message stating the reason for his disapproval.¹

(10) Approv-
al of the
executive

Financial
legislation

The foregoing process is a composite description of the procedure for ordinary laws generally followed in state legislatures. It does not apply, however, to financial legislation. In most states there are special provisions and special forms of procedure devised to insure adequate publicity and sufficient care in the matter of appropriations. For the most part a single committee may be given charge of the general appropriation bills, although other committees may report laws requiring appropriations, and private members may by amendments increase the amounts appropriated. The whole subject of state finance will be treated at length in a separate chapter.

Influence of
the organi-
zation in
legislative
procedure :

It must not be supposed that the process of legislation is carried on without direction. Leadership and direction there must be; and in some states, where the rules do not provide for setting up an all-powerful speaker and committee on rules, leadership depends more upon personal merit and influence of certain members. In all states, however, no matter how loose the organization of the legislature, there is a group of leaders who exercise real authority. Practically, this group always includes the speaker, who, if not the real leader of the house, is the agent of the organization. In some states the organization has degenerated at times into an instrument for corruption and may be controlled by one or both of the

¹ See governor's veto, pp. 136-139.

machines of the political parties.¹ But it is not necessary to assume that all organizations are corrupt. Indeed, the reverse is true. However, a study of the corrupt conditions existing at various times in some state legislatures will perhaps clearly show the extent of the power of the organization and the danger of the misuse of this power.

As has been pointed out, the committees in all state legislatures are appointed by the speaker, who, himself, is a product of the organization and who constitutes the committees so that they may do his bidding. It is not necessary that the entire committee should be composed of organization members. In many states it is enough that the chairman should be susceptible to such influence, inasmuch as he may prevent action by failing to summon a committee meeting.²

(1) Control over committees

In general, this control is exercised by the speaker through his prerogatives of recognition and decision of points of order. In some legislatures, however, the committee on rules or an informal steering committee determines in advance what measures shall be taken up and at what time votes shall be taken. In very rare cases speakers have been known to "gavel" through a measure; that is, to declare a measure passed on which the vote was dubious.

(2) Control over the procedure in the legislature

The individual members of the legislature are quite at the mercy of the organization. Their careers may be made or marred. Since the speaker has the power of appointment and recognition he can pretty successfully prevent his opponents from obtaining consideration for the measures in which they are interested, and thus destroy their legislative usefulness. By the same means he may reward his supporters and enable them to satisfy the desires of their constituents.

(3) Influence on the individual members of the legislature

¹See P. S. Reinsch, *American Legislatures and Legislative Methods*, chap. viii, "The Perversion of Legislative Action." This is an impartial and judicial account of what has been and may be accomplished through the prostitution of the organization of the legislature. Between 1903 and 1910 there were numerous articles written describing the perverted action of the legislatures, which are commonly grouped under the name of "muckraking" literature.

²In order to limit this power of the chairman some states allow 50 per cent of the members of a committee to call a meeting.

Perversion
of legisla-
tive action

As Professor Reinsch has clearly pointed out,¹ economic interests, beginning with the railroads, desired special legislative favors. To obtain these they made special appeals to the individual legislators. Some of these appeals were entirely proper, but in other cases bribery and corruption were resorted to. It was found necessary to maintain legislative agents (or the lobby) at the legislature to obtain what they considered was proper legislation and to prevent what might be harmful. At a later stage interested parties utilized the powers of the organization just described. Still later, the leader or boss of the party machine was appealed to by the interested groups, and through party control obtained satisfaction for these groups or prevented injury to them.² When this stage was reached the organization of the legislature might more properly be denominated the machine.

Effect of
legislative
perversion

The effect of this perversion of legislative action was two-fold: it removed the government from popular control and vested it in "the invisible government" (that is, the boss and the machine). Doubtless many interests obtained the desired legislation, but the methods by which their desires were accomplished taught the legislators the possibility of using these methods against the interests themselves. As a result (as investigations in some states have disclosed) individual legislators introduced "strike" bills—that is, bills dangerous to certain corporations—in expectation that the corporations would buy them off. Proper legislation was opposed until the individual legislator was satisfied by some favor or bribe. Blackmail of this sort not only debauched the legislature but compelled the corporations to keep constantly on hand legislative agents well supplied with means for the purpose of preventing such procedure. This was the lobby at its worst.

Constitu-
tional
amendments

The legislature performs another function besides the making of laws; namely, the framing of proposed amendments to the state constitution. Most state constitutions are subject to amendment by the joint action of one or more state legislatures ratified by the people.* The process of framing and passing

¹ American Legislatures and Legislative Methods, chap. viii.

² See Autobiography of Thomas C. Platt.

³ See page 31.

these proposed amendments through the legislature is much the same as the passage of ordinary legislation. A committee considers the proposition and frames the amendment. It is reported to the legislature and enacted like an ordinary bill. Most states, however, require for passage an extraordinary majority in both houses.

Although the product of the state legislature is prodigious in volume its quality does not satisfy the electorate. Proof of this statement may be seen in the increasing minuteness with which state constitutions limit the functions of the legislature. Not only have legislatures been excluded from whole fields of legislation, but state constitutions prescribe with growing exactness the method and procedure by which laws shall be adopted.¹ This is particularly true in finance. In addition, some state constitutions attempt through mandatory provisions to compel the legislature to pass certain laws. This has proved futile. In despair the electorate has sought relief in two ways: first, by legislating in the state constitutions. A glance at some of the more recent state constitutions will at once reveal the extent to which what is nominally a framework has become a code of laws. In particular this is true with regard to the laws relating to corporations. Second, the electorate is using with increasing frequency direct legislation, or the initiative and referendum.

The process of direct legislation has already been described, but its effect upon the legislature should be considered. Throughout the discussion a distinction must be made between the optional and the compulsory referendum. The compulsory referendum is where the legislature submits a bill for approval without waiting for action by the electorate. This unquestionably has the effect of lowering the sense of the responsibility which the legislature should maintain. It enables the legislators to dodge the issue and to curry favor on all sides. This type of referendum, however, should be sharply distinguished from that which submits the application of a law to the electorate of a locality. The latter is a form of local government. The optional referendum, however, is invoked only upon questions on which a substantial number of the

The
legislative
product
limited

(1) By con-
stitutions

(2) By
direct
legislation

Effect of
the initia-
tive and
referendum
on the
legislature

¹See page 27.

electorate differ from the decision of the legislature. It is in the nature of a corrective; but since the legislature has already passed the law, and the individual legislators have gone on the record as opposing or favoring it, one cannot see how this type of referendum can diminish the legislator's responsibility. On the contrary, it would seem to bring home in a concrete case his success or failure to satisfy his constituents. It may be that where either type of the referendum is in use the legislature will become still more careless in the passage of measures, but evidence is wanting upon this point. The use of the initiative can have little bad effect upon the legislature, since it is an attempt of the electorate to obtain a law which the legislature has refused. It may be, however, that the successful use of the initiative will weaken the sense of party responsibility, but it has been shown that party voting in the legislature is not as great as is commonly supposed.¹ Direct legislation has not lowered the character of the legislative product nor, on the other hand, has it greatly improved it. It can be demonstrated that hardly any law has been adopted by direct legislation for which there was not a precedent in the law of some other state acting through the legislature. At its best direct legislation has been the means of bringing satisfaction to the electorate in cases where the legislature was unresponsive to popular desire.²

¹ See page 213.

² See *National Municipal Review*, Vol. X, pp. 232-239, for an additional summary of the use of the initiative and referendum in 1920.

CHAPTER XII

STATE FINANCE

State finance is one of the most important and controversial subjects in state government. There is hardly an activity in which the state is engaged which does not in some way relate to finance. State finance in general includes the revenue, the expenditure, and the debt of the state. A discussion of the revenue involves the system of taxation, with the complex problems of the kinds of taxes to be levied, their assessment, and their collection. State expenditure involves not simply the appropriation of sums of money but the legislative procedure, which in most states is somewhat different from the passage of ordinary laws. The state debt involves not merely the payment of the interest but the provisions for the extinction of the debt and the limitations which most constitutions set to the amount of debt that a state may incur.

Importance
of state
finance

SUMMARY OF REVENUE RECEIPTS OF THE FORTY-EIGHT STATES, 1910¹

REVENUES OBTAINED	PER CAPITA	PERCENTAGE
All revenues	\$6.43	
Taxes: Property	3.25	50.6
Special	0.13	2.0
Poll	0.02	0.3
Business and nonbusiness licenses	1.62	25.3
Special assessments and charges	0.04	0.7
Fines, forfeits, and escheats	0.03	0.4
Subventions, grants, donations, and pension assessments	0.16	2.5
Earnings of general departments	0.79	12.3
Highway privileges, rents, and interest	0.35	5.4
Earnings of public-service enterprises	0.03	0.5

¹Department of Commerce, Bureau of the Census, Financial Statistics of States (1919), pp. 62, 63.

Sources
of state
revenue

The state derives its revenue usually from the following sources: (1) the sale or utilization of public property, such as lands and canals; (2) fees; (3) fines and penalties; (4) taxation—by far the largest amount. The table on page 225 gives the statistics for 1919 according to the United States Census.

Kinds of
taxation:
(1) General-
property tax

The general-property tax has always been the chief source of state revenue. This tax is imposed on all property, real and personal, according to the valuation set by local assessors. The state tax itself is usually expressed as a certain number of cents on each dollar of the valuation of the entire property of the state, and is added to the tax collected by the town, county, or city authorities and forwarded to the state treasurer. The determination of what property should be taxed is made by the legislature, and the assessors are furnished with descriptive lists covering every conceivable kind of property. Since the amount of the state tax used to be determined by the value of the property in the community, it was to the interest of the local assessors to undervalue the property and thus escape as much of the burden as possible. To prevent this many states appoint boards of equalization, which review the work of the local assessors and raise or lower the valuation of different classes of property in order to make them uniform throughout the state. About 50 per cent of state and local taxes is drawn from the general-property tax.

[The
general-
property
tax unsat-
isfactory]

As long as the wealth of the community was chiefly agricultural or tangible—that is, composed of land, buildings, live stock, and tangible possessions—the general-property tax proved fairly satisfactory, although from the very first there was a tendency on the part of both the property owners and the assessors to undervalue property. This was recognized in some states, and instead of attempting to tax the property at its actual valuation the assessors were directed to tax it at a fraction of its actual value. When the communities began to develop an industrial life large amounts of wealth ceased to be in tangible form and were held in the form of securities, mortgages, stocks, bonds, and notes. Since these could be concealed from the eyes of the assessor, a great deal escaped taxation. Property holders were expected to make

declaration under oath of all their property, both tangible and intangible; but the penalties for failure to do this were not sufficient to compel such a declaration, and much of the intangible property actually escaped taxation, so that a lax spirit developed which condoned the making of false returns. The result of this was twofold. Tangible property bore more than its just share of taxation, while intangible property in the hands of dishonest holders escaped taxation and that which was honestly declared was so heavily taxed that its income was seriously impaired. In the attempt to remedy this many states, sometimes by constitutional amendment, resorted to classifications of one sort or another. Real estate and tangible property were taxed at one rate, intangible property at another and far lower rate. It was by offering a lower rate of taxation that many holders of intangible property, which had escaped the higher rates applied to tangible property, were willing to bear the tax.

Another method of taxing intangible property was to tax not the property itself but the income from the property. The taxation of incomes has been common in England for a long time. In Massachusetts professional incomes derived from salaries and wages have been taxed since colonial days. Since the adoption of the federal income tax in 1913, however, more and more states have adopted this method of supplementing the general-property tax. The modern income tax, in contradistinction to the old Massachusetts income tax, is applied to incomes derived from all sources, whether salaries, wages, or incomes from business or from securities. In making this application, however, some states classify the incomes derived from the different sources and tax them at different rates. Thus, in Massachusetts the income derived from salaries, wages, and annuities is taxed at $1\frac{1}{2}$ per cent; from gains, at 3 per cent; from interest and dividends, at 6 per cent.¹ In all these systems there is some exemption allowed to everyone, and generally additional exemptions to married people, with still further allowances on

(2) Income
taxes

¹For a description of the Wisconsin income tax of 1911 see *American Political Science Quarterly*, Vol. XXVIII, p. 569; for the New York income tax of 1919 see *ibid.* Vol. XXXIV, p. 521.

account of children or dependents. Each taxpayer receives a blank on which he is obliged to state under oath the income which he has received from the different sources. The opportunity for evasion and for making false returns is still present, but the revenue officials in most states examine very carefully such returns and in some instances check them up by the information given by employers regarding salaries and wages paid and by the lists of stockholders from corporations.

(3) Inheritance taxes

The inheritance tax has been used as a source of state revenue since about 1890 and is now found in almost all the states. Originally the rates were not particularly high, but the tendency has been to increase them.¹ Moreover, the progressive principle of increasing the rates as the amount of inheritance increases is more generally employed. Rates also are made to depend upon the nearness of the relationship of the legatee or devisee to the testator. One of the chief arguments in favor of the inheritance tax is the ease with which it is collected. Property acquired by inheritance goes through the probate courts and thus its possession cannot be concealed. The estate tax levied by the federal government interferes with this source of revenue, which was formerly the peculiar field of state taxation.

(4) Corporation taxes

One of the most popular methods of raising money is the tax upon corporations. This is levied in various forms—as a tax upon the property of the corporation, or as a license for doing business based upon the amount of business, or upon the income of the corporation. Although very popular with the legislators, the equitable administration of this tax is difficult. It is comparatively simple to tax a manufacturing corporation on almost any basis, but it is extremely difficult to devise a proper tax for public-service corporations. Only a part of the property of a corporation is tangible. This would include the stations and equipment of a railroad, or the motors of an express company, or the wire and poles and stations of an electric-light company. But these tangible pieces of property constitute the smallest part of the assets

¹ In 1919 Massachusetts increased by 25 per cent the taxes on successions and legacies.

of the corporation. What is most valuable is the right or the franchise to do business. How should this be taxed? In some states it is taxed on the basis of the gross returns of the entire business, in some on the basis of the net returns; in others the company is taxed upon its capital as representing the value placed by the incorporators upon their entire property, including the franchise. Closely connected with the taxation of public-service corporations is the economic effect such taxation has upon the rates which these corporations are allowed to charge and upon the services which they render. Legislators frequently look only to the income from the taxes and forget that the companies must be allowed either to increase their rates or to diminish the quality of their service. In some states special commissions are intrusted with the adjustment of these very complex problems.

In Pennsylvania, Delaware, and many of the Southern states there are special taxes levied upon many sorts of business. Thus, in Georgia, the city of Atlanta is allowed to levy four hundred and sixty-six such special taxes. Business taxes in most of the states, however, are confined to a comparatively few occupations.

The states may tax all tangible property within their jurisdiction. Intangible property may be taxed by the state which has jurisdiction over either the property or the owner. Thus, intangible property may be subject to taxation by two jurisdictions, but this has not been held to be contrary to the principles of the national Constitution. There is one exception to the principles just stated: states may not tax the property of the national government, whether this be tangible land or buildings or intangible securities owned by individuals. An early decision, moreover, exempted all the instrumentalities of the national government from taxation. This has been interpreted so that a state may tax an instrumentality of the national government provided it does not interfere with the purpose for which that instrumentality was created.¹ Thus, federal corporations are subject to state taxation. By another decision, however, the incomes which citizens of a state derive from the national government are exempt from state taxation.

(5) Business
taxes

Constitutional
limitations
upon the
power of
the state
to tax

¹*National Bank v. Commonwealth*, 9 Wall. 353.

Restrictions
in state con-
stitutions
on the
power
to tax

The constitutions of most of the states originally required that all taxation should be uniform. This prevented any classification of property for the purpose of taxation, and rested upon a political theory which emphasized the equality not only of the citizens but of their property. In recent years, however, the tendency has been not to regard all property as equal, but to distinguish it on the basis of its ability to bear the burden of taxation. Thus, some states, by constitutional amendment, have removed the early restrictions and are allowed to classify property for purposes of taxation and to prescribe different and progressive rates for different kinds of property.

State ex-
penditures

The most striking and alarming feature of state finance is the rapid increase of state expenditures. Not only are the expenditures for the various states rapidly increasing, but they are increasing more rapidly than either their revenues or the assessed valuation of the property. Thus, between 1903 and 1913 the total governmental cost payments of the states increased from \$186,000,000 to \$383,000,000, or 106 per cent. In the next two years the expenses increased 28 per cent, and in the next year (1916) 3 per cent. The expenses of 1917 increased 1.4 per cent over those of 1916; those of 1918 increased 8.5 per cent over 1917; those of 1919 increased 11.6 per cent over 1918. The entrance of the United States into the World War was in part responsible for this increase.

Detail of
state ex-
penditures

An idea of state expenditures may be derived from a summary of the principal items of governmental-cost payments made by the states in 1918.

SUMMARY OF GOVERNMENTAL-COST PAYMENTS, 1918

	PER CAPITA	PER CENTAGE
All governmental costs	\$0.00	
All expenses and interest	5.42	
Expenses of general departments	5.16	84.7
Expenses of public-service enterprises	0.02	00.4
Interest	0.23	3.8
Outlays	0.68	11.1

Department of Commerce, Bureau of the Census, Financial Statistics of States (1919), pp. 62, 63.

Some of the causes for this growing expenditure are to be found in the higher cost of service and material. But these increases would amount to only a fraction of the total increase. The enormous growth of state expenditure is indicative of the additional service which the state is attempting to perform and the extension of the sphere of its activities. Not a session goes by in any state legislature when proposals are not made for the extension or improvement of some state service. Every one of these extensions adds to the state expenditure and increases the burden of taxation. The results were alarming and were beginning to be appreciated about a decade ago. State executives and legislatures despaired of limiting or decreasing the activities of the state—the whole tendency of the times was toward still further expansion. The problem was thus a twofold one: to increase the sources of revenue, and for this end the taxes just described were introduced; secondly, to discover some more efficient and economical method of administering the state finances. With this in view many states appointed commissions of efficiency and economy and reorganized their administrative departments. In addition the majority of the states have revised their method of financial legislation and have introduced the so-called budget system.

Causes and
results of
increased
state ex-
penditures

Until very recently the chief characteristics of financial legislation in the states were confusion and absence of responsibility. Some improvement has been made, but with the exception of a very few states financial legislation is still in an unfortunate condition. The traditional method by which finance was handled was to raise the revenues by means of general laws which remained in force from year to year. The appropriations of each session were added together and a rate fixed upon the taxable property which would produce sufficient revenue to cover the appropriations. In many states the general appropriations were made by a committee known as the ways and means or finance committee, but these appropriations rarely included all the expenditures of the state, for other committees were allowed to initiate projects requiring financial support, and there was no restriction upon the individual legislator which prevented him from proposing an increase to the amount

Financial
legislation

recommended by the appropriating committee. Moreover, in those states where the governor could utilize his veto power after the session of the legislature had terminated, there was no means of knowing how much money had actually been appropriated. State finance was hit or miss. There was no scientific budget, and no one was held responsible for the preparation of one.

State bud-
get systems

About forty states have adopted some form of budget system.¹ A budget has been defined as a plan for financing the government during a definite period, prepared by a responsible executive and submitted by him to a representative body whose approval and authorization are necessary before the plan may be executed. A proper budget should therefore present an estimate of the revenue and the proposals for the expenditures of this revenue. It should also furnish some method of comparison with the revenues and expenditures of previous years. A budget is thus essential if there is to be a favorable balance in the financial operations of the state. But a budget may be even more than this: it may propose a definite scheme or plan of governmental activities and thus become a program as well as a financial statement.

Types of
budgets

In general, the different systems of state budgets may be classified into four types with reference to the location of the responsibility for their initiation:² (1) The executive

¹The material on the budget system is voluminous. A good idea of the principles of the system and its present working may be obtained from the following sources: Frederick A. Cleveland, "Evolution of the Budget Idea in the United States," in the *Annals of the American Academy of Political and Social Science*, Vol. LXII, pp. 15-35. Also, by the same author, "Constitutional Provision for a Budget," in *Proceedings of the Academy of Political Science*, Vol. V, No. 1, pp. 141-189; *Bulletin No. 2*, of the Bulletins for the Massachusetts Constitutional Convention, Vol. I, presents a very clear statement of the principles, the discussions of the chief types, with the texts of typical laws and amendments. A. E. Buck, in the *National Municipal Review*, Vol. VIII, pp. 422-435, discusses the present status of the executive budgets in the state governments. The annual volumes of the American Year Book chronicle the adoption and give a brief description of the various systems. See also W. F. Willoughby, *The Movement for Budgetary Reform in the States*.

²See A. E. Buck, in the *National Municipal Review*, Vol. VIII, pp. 422-435.

budget. In this type the governor is made responsible for the formulation of the budget. More than twenty states have adopted this system. (2) The administrative-board budget. In this a group of administrative officers, which usually includes the governor, prepares the budget. In 1919 about nine states followed this plan. In the majority the governor was given the power to appoint the members of the board. (3) The administrative-legislative board budget. Here the preparation of the budget is intrusted to a committee composed of both administrative officers and members of the legislature. Six states followed this method in 1919, and in every case the governor was a member of the board. (4) The legislative-type budget. In this the budget is prepared by a legislative committee. In 1919 this was followed by two states only—Arkansas and New York.

As may be seen from the foregoing, the executive budget is the more popular among the states, and the tendency is toward this type. In addition there is a distinct movement to increase the power of the executive in the preparation of the budget and to diminish the power of the legislature in its alterations. This is carried to its logical conclusion in Maryland and Utah, where the action of the legislature is limited. In Maryland the legislature may increase or decrease the items relating to the general assembly and judiciary, but it is prohibited from amending the budget in those items relating to public-school funds or constitutional obligations and is allowed to decrease but not to increase other items. In Utah the legislature may strike out or reduce items, provided public-debt obligations and the salaries of the public officers during their term of office are not reduced.

More state laws prescribe a certain form in which the budget should be prepared, although sometimes this is left to the governor. The common procedure is for the different departments desiring appropriations to fill out blanks provided either by law or under the direction of the governor stating the amounts and the purposes for which they are asked and showing a comparison with one or more previous years. This involves considerable classification.

The executive type

Preparation of the budget

**Review and
revision of
estimates**

All but one¹ of the executive budget laws provide for a review of the estimates by the governor. In the majority of the states the governor may revise these estimates, and in many states he may hold investigations in order to determine the need for the requests.

**Form and
contents of
the budget**

The form and contents of the budget are provided for either by constitutional amendment or by statute. The Maryland budget amendment of 1916 was the first to make detailed provision along this line. It provides not only for a "governmental appropriations" budget, which shall include all appropriations necessary for the operation of the government, and a "general appropriations" budget, which shall include all other estimates, but each of these budgets must contain a complete plan of the proposed expenditures and estimated revenues, with the estimated surplus or deficit. In addition the budget must be accompanied by a statement showing the revenues and expenditures for each of the two preceding years, a balance sheet, a statement of debts and funds, an estimate of the state's financial condition, and explanations by the governor.

**Date of
submitting
the budget
to the
legislature**

There are many variations in the different states concerning the date at which the budget should be submitted. The general purpose is to have it in the hands of the legislature in the early days of the session.

**Other
provisions
concerning
the budget**

The general tendency of budget legislation and amendment is to require that all appropriations should be in the form of one consolidated appropriation bill. In Maryland, Utah, and Nevada the power of the legislature to increase the estimates in the budget is strictly limited. In a number of other states the legislature may increase or decrease the items but may not make any further appropriations until the general bill has been passed.

**Effect
of state
executive
budgets**

It is still too early to generalize concerning the effect of the system just described, since, in the majority of states, it has not been in operation long enough to give sufficiently accurate data on which to base conditions. If, however, the opinions of the governors of the states adopting this method may be taken as conclusive, the budget system has been a great success.

¹ Iowa.

It has tended to simplify financial legislation, has made for economy, and has fixed very definitely the responsibility upon the governor.

Since the state expenditures are increasing more rapidly than the revenue, all the states resort to borrowing money and all the states incur debts. The total of the gross debt for all the states in 1919 was \$744,382,933, or \$7.08 per capita. New York led the states with a total debt of more than \$238,000,000, but Massachusetts with more than \$133,000,000 had the greatest per capita debt, \$34.77.¹ New Jersey and Nebraska had the smallest per capita debts, standing at four cents and sixteen cents, respectively. These debts may be classified as (1) funded, that is, money borrowed on the security of bonds sold to the public; (2) floating, for which there is no cash in the treasury or other assets specifically provided; and (3) the current debt, for the redemption of which provision is fully made by cash on hand or revenues levied but uncollected.

All states are prohibited from incurring a debt for anything but a public purpose. What a public purpose is may be determined in each particular case on the basis of a taxpayer's suit.² In general, while money may be raised by taxation or obtained through borrowing for the establishment of public works or the relief of the poor, for educational purposes, and for pensions and bounties, it may not be borrowed and appropriated for the purpose of improving or aiding individuals.³ In addition to this general constitutional restriction, the constitutions of the different states make other limitations. Many states prohibit the legislature from creating any state debt, but immediately thereafter enumerate exceptions; for example, Georgia and Texas prohibit the creation of any debt except to pay the existing debt. Other states, like Illinois, Iowa, and New Mexico, limit the incurring of debt except to repel invasion,

State debt

Constitutional limitations on state indebtedness:
(1) Purpose for which the debt may be incurred

(2) Debt restrictions

¹See Department of Commerce, Bureau of the Census, Financial Statistics of States (1919), p. 112.

²This is an action brought by a taxpayer to test the validity of the laws levying the tax assessed against him.

³See Emlin McClain, Constitutional Law of the United States, pp. 124-127, with cases.

[Debt
limits]

to suppress insurrection, or to defend the state in war. In addition to these limitations of purpose, most states provide limitations in amount. These limitations, known as the debt limit, may be in the nature either of a specific sum or of a percentage of the assessed value of taxable property. Only three of the forty-eight states have no debt limits of any sort.

Payment of
state debts:

By far the greater portion of the debts of the state are funded; that is, secured by bonds held by the public. Originally there were no provisions made for the payment of these bonds at their maturity. Few states had the courage or the resources to levy taxes in any current year so far in excess of the expenses as to enable them to redeem the bonds which fell due. They therefore resorted to the practice of issuing and selling fresh bonds to pay the obligations of the preceding issue. In this way, although the interest charges might possibly be diminished in the subsequent issues, the amount of the state debt did not decrease. Two methods are now in vogue for the extinction of bond issues.

(1) The
sinking
fund

The sinking-fund system provides for the annual appropriations of money which is invested and which, at compound interest, is expected to be sufficient to extinguish a debt at its maturity. Theoretically there is little objection to this system, and perhaps it may be somewhat less expensive than the system later to be described, but there are very strong practical objections which the experiences of many states have shown to outweigh any theoretical advantage. In the first place, the annual appropriation may possibly not be made because of unforeseen expenses or demands upon the resources of the state. Once let the legislature omit a single appropriation and it becomes increasingly difficult for subsequent legislatures to make up the deficit. Secondly, the money so appropriated is cared for by the state treasurer, the sinking-fund commissioner, or some board who invests the money. It is true that most states restrict and limit the free discretion of the sinking-fund commissions. Nevertheless, even within these limits, there is too often an opportunity for making bad investments. Moreover, since the states borrow money for terms of twenty, thirty, or even fifty years, an entire generation may lapse before the fund

is called upon to make its payment. This length of time has occasionally given a sense of security to commissioners which they have grossly misused. Thus, it has happened that in case after case an issue of bonds for which an adequate sinking fund was provided by law cannot be retired on its maturity because the fund is not sufficient to fulfill that purpose.

The more modern way of managing a state debt is by the issuance of serial bonds. A certain proportion of these bonds mature annually, biennially, or at any period the legislature sees fit to determine. The state is thus called upon to pay a constantly decreasing amount for interest. But more important than that, the state is compelled every year or at certain periods to raise by taxation a sufficient sum to redeem the quota of bonds due at that date. Thus, at the end of the period for which the debt has been incurred the entire issue has been redeemed. Should the legislature fail to appropriate the money to redeem the bonds due at any particular date the credit of the state would suffer immediately. In the case of failure to appropriate for the sinking fund the injury to the credit of the state is more remote. This method has none of the disadvantages of the sinking-fund system, but it does require each legislature to appropriate a sum and thus raise a larger annual appropriation than is necessary under the sinking-fund system. The sinking fund gains by compound interest; the serial plan gains by saving interest which the state has to pay on the entire issue. As has been said, there is very little difference in the actual expense. Experience, however, shows that there is very great saving in practice.

(2) Serial
bonds

CHAPTER XIII

THE LEGAL SYSTEM OF THE STATES

I. SOURCES OF STATE LAW

Importance
of state
laws

State laws are more important to the average citizen in his daily life than federal laws. According to the original conception of the Federal Constitution, in the minds of the framers the national government was given the power to legislate concerning affairs which affected the nation as a whole, but the control of the individual in politics, in business, and in his domestic relations was left to the states. Interpretation and construction by legislative and executive authority, by party organizations and by public opinion, and especially legal changes like the Fourteenth and Fifteenth Amendments have greatly extended the sphere of action and increased the power of the federal government. Yet it may safely be asserted that the majority of the ordinary everyday concerns of a citizen are determined by state rather than by federal law. This is more clearly understood when it is remembered that the states and not Congress possess the police power. By the police power is meant the power to regulate the health, morals, convenience, and general welfare of the citizens. It is true that the interstate commerce acts and the regulations of the Federal Trade Commission have apparently encroached upon this field of state control, but the authority of Congress in this sphere is only incidental to some specific power granted to Congress, like the power to regulate commerce or to levy taxes. Congress may not directly prohibit child labor; the states may. Congress may not legislate concerning the morals of the citizens of the state except through interstate commerce or taxation; the states may make an immoral action a crime. This is but another way of saying that practically all criminal law is state law, not national. The property of the citizen is determined and protected by

state, not federal, law. It is true that the Fourteenth Amendment prohibits a state from depriving a citizen of his property without due process of law, and that this gives the Supreme Court of the United States the power to review state legislation; but it does not mean that Congress may legislate to protect the property of a citizen, except against taking without due process or contrary to the procedure, forms, and spirit of American law. In the same way the life and liberty of a citizen depend upon state, not upon federal, legislation, although, under the Fourteenth Amendment, the Supreme Court may review such state legislation in order to see that it does not take away due process of law. Thus the court has said, "It [the Fourteenth Amendment] does not invest Congress with power to legislate upon subjects which are within the domain of state legislation; but to provide modes of relief against state legislation, or state action. . . ." ¹ Moreover, it should be remembered that the political activities of the citizens are determined by state, not federal, law. The Constitution guarantees to every state a republican form of government and prohibits any state from disfranchising a citizen of the United States on account of race, color, previous condition of servitude, or sex. Beyond this the state determines who shall take part in the government and what the form of government shall be, and makes the laws upon which the life, liberty, property, and welfare of its citizens depend.

A law has been defined as "a rule of civil conduct pre-
scribed by the supreme power in a state, commanding what
is right and prohibiting what is wrong." ² Certain words in this
definition need explanation. (1) Law is a rule; that is, it is
something permanent (until changed by the governing author-
ity), uniform, and general. It must apply not to a single
individual but to all individuals or to all of a certain class
within the community or society. It differs from advice which
a citizen is at liberty to follow or not, in that it depends not
upon the approval of the citizen but upon the will of the maker.

Definition
of law

¹*Civil Rights Cases*, 109 U. S. 3, 11. See also Everett Kimball, *National Government of the United States*, p. 393.

²Blackstone, *Commentaries*, Introduction, pp. 44-46.

It differs from a contract entered into by the citizen in that the rule is a command directed to the citizen. A contract in popular language is an "I will" or "I will not"; law is a "Thou shalt." (2) A law is a rule of civil conduct, thereby distinguishing it from rules for moral conduct and rules of faith. This does not mean that law may not deal with morals or religion. It may; but law deals primarily with the citizen in relation to other citizens, and their union in the political community or society known as the state. (3) A law is prescribed; that is, must be notified to the people. This may be done in various ways: by universal tradition and long practice, as is the common law; by proclamation, either written or spoken, which may call attention of the citizens to the law; or by publication of the statutes. (4) A law is a rule prescribed by the supreme power of the state. In the state and national governments of the United States and in direct legislation the people are sovereign. The people act directly in the acceptance of their constitution by means of the initiative, the referendum, and the recall, or indirectly through their representatives in the legislature. Law is the rule prescribed by the people, either directly or indirectly. It is true that the people in the legislature may delegate certain subordinate legislative functions to municipalities and towns, but these ordinances or by-laws may at any time be reversed, amended, or repealed by the action of the supreme legislative power in the state or by the people acting directly or through their agent the legislature.

Sources of
state law:

Without attempting a complete classification of all the possible sources from which state law may be derived, the following outline will indicate the composition of by far the larger part of the law as administered by the state courts. This law is derived from four main sources—(1) statutory law, (2) international law, (3) common law, (4) equity.¹

¹ This classification of the sources of state law is not a mutually exclusive one. International law is composed in part of statutory law (that is, treaties and agreements) and in part of custom and usage. In the same way, although common law had its origin entirely in custom it is modified and developed by statutes. So also equity, which originated in the decision of cases, has now largely been reduced to statutes.

Statutory law, or, as it is sometimes known, written law, is the conscious and formal attempt of the citizens to prescribe a rule of civil conduct, to make a law. Statutory law as administered by the state includes two main divisions: the Federal Constitution and the constitution of the state, and each of these divisions is subject to further differentiation into federal statutes and treaties and state laws and municipal ordinances.

The limitations which the Federal Constitution prescribes upon state legislation and state activities have already been discussed.¹ It is sufficient here to note that every right guaranteed by the Constitution to the citizens of the United States and every limitation prescribed by the Federal Constitution upon state activities is, in the first instance, enforceable in the state courts; that is, the state courts may overrule the activity of any state official or declare unconstitutional any act of a state legislature in conflict with the Federal Constitution.

In like manner all federal statutes passed in the fields of legislation which are granted to Congress are superior to state constitutions and state legislation. These are constantly increasing in number, as by interpretation and amendment the fields of national action are extended. Thus, for example, the Volstead Act, by enforcing the prohibition amendment, nullified much state legislation.

The Federal Constitution gives to the president, with the assent of the Senate, the power to make treaties. These treaties, like acts of Congress, are superior to the constitutions and laws of the states. In the last instance they are enforceable through a decision of the Supreme Court of the United States, but any state court may properly declare state action unconstitutional by reason of conflict with a federal treaty. The supremacy of these three types of federal law over any state action rests upon Article VI of the Constitution, which says: "This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land. . . ."

¹ See pages 8-17.

(2) State
constitu-
tions

The federal statutory law just discussed is mainly negative in its effect upon state courts. It prevents or supersedes state action. The positive law which the state courts enforce is derived in the first instance from the state constitutions. The nature of these constitutions has been already discussed.¹ It is sufficient here to note that they not only provide a framework of government but also guarantee to the citizens certain rights and privileges. Many state constitutions go even further and enact codes of laws which are applied by the courts.

[State
statutes]

The greater part of the written law of the states, however, is to be found in the form of statutes. These statutes may be the result either of a bill passed by the legislature or of an act adopted by the direct action of the people—the initiative and referendum. Included in the state statutes, although not strictly the enactment of the supreme legislative power of the states, are the municipal by-laws and ordinances and even the regulations adopted by administrative commissions acting in pursuance of some state law. State statutes as thus defined include the greater part of the civil and criminal law which the state courts enforce. This body of law is increasing with portentous speed. When it is remembered that there are forty-eight state legislatures, the majority of which meet every two years, and that each produces at least one substantial volume of statutory law at every session, it will be seen that the body of law in the United States is enormous.

[Municipal
ordinances]

Interna-
tional law

International law possesses the character both of statutory law, in that it may be a formal enactment of the sovereign power in the form of a treaty, and of common or customary law (which will later be described), in that it depends upon usage. International law is a part of the law of every state. In general it is enforceable only in the federal courts, but a state court might negative the action of a state official on the ground that it was contrary to some principle of international law. Ordinarily, however, the aggrieved party would appeal from the action of the state official to a United States court.

Common
law

Common law, or, as it is sometimes known, unwritten law, was the original basis of the English legal system. It differs

¹ See pages 18–30.

from statutory law in several important respects. Statutory law is formal legislation; common law is largely based on custom. Statutory law is a general rule made by the legislature or by the people acting directly; common law is made by the judges and courts in applying to a particular case a rule derived from customs which "have been used so long that the memory of man runneth not to the contrary." In its origin common law was derived from the customs of the various race elements that made up the English people; in its development common law was the application of these customs by the judges to the particular cases brought before them. At a very early period in the history of the common-law courts the judges and lawyers made memoranda of decided cases and much later committed their records and decisions to writing. Hence it gradually became easier to consult the previous cases than to determine what was the original tradition or custom. Common law is thus case law, judge-made law, dependent upon precedent. Statutory law is legislation, the making of a rule to form a new precedent. Statutory law may be easily amended or repealed to suit changing conditions; common law was formerly supposed to embody unchanging principles and was changed with great reluctance. Statutory changes became much more frequent in England and America in the eighteenth century. The English colonists at first considered the common law not suited to conditions in the New World, and in New England they were antagonistic to it. Gradually, and in varying degrees in different colonies, the common law was adopted so far as it was applicable to the new frontier conditions.¹ After the Revolution there was a tendency in some states to declare the doctrines of common law inapplicable in American courts, but this was merely temporary. Most states made the common law of England, as it was at the time of the Revolution, the basis of their own common law. Other states, by statutory enactments, have adopted most of the principles of common law.² In the United States common law includes not only the

[Common
law in
England]

[Common
law in the
United
States]

¹ P. S. Reinsch, *English Common Law in Early American Colonies*, p. 58.

² In Louisiana the Code Napoleon of the civil law prevails in civil matters, but the English common law is used in criminal cases.

principles evolved from the decisions of the courts but many English statutes as well. Even in England common law was added to by acts of Parliament, and all these which were in force in the colonies at the time of the separation from England, unless repealed, are included in American common law. Finally, American common law is subject to alteration and addition by legislative action and thus in part resembles statute law.

Equity

It is extremely difficult to give a satisfactory description of equity in a few words. Some understanding of the term may be gained from a brief statement of its origin. As has been said, during Saxon times the varying customs were the basis of the English legal system. With the Norman conquest and the accession of William the First and his immediate successors, a new theory came into English jurisprudence. The king was considered the fountain of justice. He himself and his officers dispensed justice and enforced the king's will. The jurisdiction of the common-law courts was greatly restricted. The forms of action and the procedure in these courts were not flexible enough to grant justice in the rapidly changing conditions. Consequently many litigants, after they had been refused what they felt was their just remedy by the common-law courts, would appeal to the king in person in his character as the fountain of justice. The most important official in the king's court was his chancellor, generally an official of the Church and known as the keeper of the king's conscience. From the very earliest times he was the confidential adviser of the king. When appeals from the common-law courts became too numerous for the king to attend to in person they were turned over to the chancellor, who became the head of a special court where these petitions for relief were heard. This court was known as the chancellor's court or, later, the court of chancery.

Basis of the decisions of the chancellor

The common-law courts were bound by precedent. The chancellor was not supposed at first to be bound by the decisions of the common-law courts or to be limited in any way other than by his conscience. He was supposed to do justice, to grant relief, or to provide remedies in case the common-law courts could not grant relief or provide a remedy consonant with

justice. Although originally the chancellor was not bound by previous decisions and precedents, his decisions were preserved and in time came to be regarded as precedents in similar cases. Thus, there grew up beside the common law, and in many ways superior to it, the precedents of the court of chancery—a set of principles and a procedure which is known as equity.

Today equity procedure is almost as rigid as the procedure at law; that is, there have been evolved precedents, rules, and maxims which determine its use. There is this difference, however, that remedies in equity are more easily adjustable to the circumstances of particular cases. A discussion of a few of the maxims of equity will make this clear.

“Equity will not suffer a wrong to be without a remedy.” This is the key to the whole system. In law there is no wrong suffered unless the law provides a remedy. Equity will not allow a wrong to be committed. It provides a remedy for every wrong and even more. It sees to it that the remedy is an adequate one. “Equity acts *in personam*.” By this is meant that equity directs the performance or the cessation of certain acts which are necessary that justice may be done. A decision at law in criminal cases results in a sentence—imprisonment or fine. A decree in equity is directed against a person and is a command to him to do a thing or to refrain from doing a thing. The limit of a remedy in law is the property which may be seized and sold to satisfy damages. In equity a person may be punished for contempt of court; that is, for refusal to obey the decree. Law gives damages. Equity compels performance. “He who comes into equity must do so with clean hands.” This means that if a litigant claims fraud, he must be free from fraud himself. “He who seeks equity must do equity!” This means that he not only must have clean hands but must be willing to do what is right and fair in the whole transaction.

The federal courts administer both law and equity. There are no separate and distinct courts. About half of the states follow this practice, and most courts of general jurisdiction sit as courts of law or of equity and may grant legal or equitable relief according to the nature of the case. In a few states the distinction between legal and equitable remedies has been

Character
of equity
jurisdiction

Maxims of
equity

Equity in
the United
States

abolished.¹ This has been accomplished by the adoption of what is known as "code procedure," which attempts to prescribe a form of action for every case. In so doing, the codes utilize both the common-law procedure and the reliefs of equity. Hence it is correct to assume that equity is administered in the courts of every state. This merging of law and equity, and the assumption so general in the United States that law is too technical for anyone but trained lawyers, have made the distinction between these two branches of law a matter of ignorance or of indifference to the average person.

2. RIGHTS OF PERSONS AND PROPERTY

Legal
rights

A legal right may be defined as a power, interest, or privilege recognized and protected by law. A legal wrong is a violation of a legal right. A legal remedy is a method employed by the law to enforce a legal right or redress a legal wrong.² Legal rights, however, may be divided into two classes. One class of rights comprises those which the possessor holds against the entire community and which the whole community is bound to respect. This class of rights is sometimes called the rights of ownership or, in more technical language, rights *in rem*. Another class of rights, however, consists of those which the possessor may enforce against particular persons only. These correspond to obligations on the part of such persons to act or to refrain from action in regard to a subject matter of the right. These rights are called rights of obligation, or rights *in personam*. Both types of rights may be illustrated by a contract between two parties by which one promises to pay for an article and the other to deliver the article. In such a case the person receiving the goods acquires a right *in rem*, while the person receiving the promise acquires a right *in personam*.³ In the one case the state will protect the owner of the goods in his possession of them against the whole community. The owner has the right of ownership. On the other hand, the one receiving the promise to pay has acquired a right

Rights
in rem

Rights
in personam

¹ California, Connecticut, Indiana, Minnesota, Missouri, New York, Ohio, South Carolina, Wisconsin, and other Western states.

² W. L. Clark, *Elementary Law*, p. 67.

³ *Ibid.* p. 69.

in personam against the person making such a promise. The law will protect him in the exercise of this right, not as against the whole community but as against the person making the promise.

All free governments recognize three fundamental rights *in rem*: the right of personal security, the right of personal liberty, the right of private property. The constitutions of all the states guarantee these rights. Fundamental rights
in rem

The right of personal security is the right to life which is recognized as the natural right of every man unless his existence has become a menace to the state or unless his life is needed for the protection of the state. This right is the most fundamental one. The right of personal security includes more than mere existence. It includes the right to the use of the limbs. A legal distinction which is not always clear is made between the limbs and the body. Thus a person may be justified in using any amount of force, even to the extent of killing a person who threatened to destroy his life or limbs. But he would not be justified in killing another who merely threatened an injury to his body.¹ Right of personal security

Personal liberty means the right of an individual to act with freedom except so far as he is restrained by law. In the constitutions of the states liberty means more than this, and includes all those rights necessary for the pursuit of happiness. These rights, however, are not necessarily included in the legal conception of the word "liberty." Rather they are moral rights. Personal liberty in the legal sense is the freedom of the individual so far as he is not restricted by law. Since the law may act differently upon different classes, it is possible to speak of the right of personal liberty in a state where slavery exists, provided slavery is established by law. Personal liberty, moreover, is generally held to comprise more than mere freedom of movement and may include freedom of thought, speech, and Rights of personal freedom

¹According to legal tradition, which carries us back to less civilized days, the limbs include the arms, legs, eyes, front teeth, and all parts the deprivation of which would render a person less able to defend himself in a fight. Thus a threatened injury to the eye might justify the use of any amount of force in defense; not so in the case of a threatened injury to the nose.

the right to pursue any lawful calling. It should be repeated, however, that the rights of thought, speech, and pursuit of business are conditioned upon the law of the state, which may make certain callings illegal, may prohibit or limit the right to speak and publish certain matters, and may restrict the freedom of movement of its citizens.

Right of
property

All states recognize the right of an individual to possess and own things unconnected with his person. This is the right of private property. In strict legal theory all property within the state is subject to the sovereign power of the state, and thus it may perhaps be technically incorrect to speak of the absolute ownership of any private property. In fact, the legal phrase by which private ownership of land is described is borrowed from the feudal system, in which the sovereign was recognized as the supreme landlord who granted the land to his tenants according to the various forms of tenure. Thus today the most absolute ownership of land is described as being in fee simple. Another distinction must be made with regard to the right of property; namely, between the rights of ownership and of possession. Ownership involves the right of absolute control of the property, subject only to the law of the state. Possession, however, is the immediate holding of the thing. It may be wrongful possession, as in the case of larceny, or it may be rightful possession, as in the case of leasing. In fact, a lease for a piece of land illustrates both the ownership and the possession of the land. The lessor owns the land and may dispose of it in any way he sees fit, subject, however, to the rights of the lessee as expressed in his lease. The lessee, on the other hand, does not own the land, but has possession of it; that is, he may hold the land during the duration of his lease and use it according to the terms of his lease.

Ownership;
possession

Ownership
limited

(1) By rights
of others

Private ownership of property is subject to certain limitations. The chief of these, as recognized by the law, are the following: (1) An owner may not use his property so as to interfere with the rights of others. The legal golden rule is expressed in the Latin maxim *Sic utere tuo ut alienum non lardas* (So use your own as not to injure that of another). (2) The private property of an individual may be taken to

satisfy his just debts. These debts may be obligations which he has incurred in business transactions or damages for which he is liable through the injury of the rights of others. Thus, if the court should award damages against a motorist for injuries he had inflicted upon another person, the property of the motorist might be sold at auction to satisfy this claim. Most states, however, except from seizure to satisfy debts such property as the tools or implements of one's trade or occupation, the declared homestead of a householder, and sometimes an additional exemption known as the poor debtor's exemption, or the allowance of the poor law. (2) By liability for debt

(3) The property of every owner is subject to the right of taxation on the part of the government. This right of taxation is an inherent attribute of sovereignty and may be exercised without limitations other than those prescribed by the constitution. Private property may, by due process of law, be seized and sold to satisfy the demands of taxation. (3) By liability to taxes

(4) All private property is held subject to the right of eminent domain. This is the right of the state, or of some corporation created by the state to serve in a semi-public function such as building and operating a railroad, to acquire specific property. The right of eminent domain differs from the right of taxation in that the state or corporation taking the property must give just compensation for the property so taken. Property taken under the right of eminent domain can only be taken for a public purpose. Just what a public purpose is varies from generation to generation and is subject to judicial interpretation. (4) By right of eminent domain

(5) Finally, all private property is held subject to the police power of the state. This has been briefly defined by the Supreme Court as "nothing more or less than the powers of government inherent in every sovereignty . . . that is to say, . . . the power to govern men and things."¹ In practice, however, it includes the right of the state to make reasonable regulations for the promotion of the morals, safety, health, general welfare, and convenience of the community.² (5) By the police power

¹ *License Cases*, 5 How. 504, 583.

² The power of the state over the property of its citizens has been well defined by the Supreme Court as follows: "The power of the State

Kinds of
property

Property may be classified according to its tangibility as corporeal and incorporeal property. Corporeal property is that which may be seen and touched. Incorporeal property, however, comprises intangible rights, which exist only in the contemplation of the law. Thus a piece of land is corporeal property; the right of passage over that land is also property, but is incorporeal property. Articles bought on credit are corporeal property. But the merchant, as a creditor, has intangible and, therefore, incorporeal property in the right he has to the payment of a debt. When the debt has been paid this incorporeal property vanishes. Other examples of incorporeal property are franchises, annuities, rents, stocks, and bonds.

Real and
personal
property

According to the Roman law property was divided into movables and immovables, and in modern English and American law immovable property is described as "real property" and that which is movable as "personal property."

over the property of the citizen . . . is well defined. The State may take his property for public uses, upon just compensation being made therefor. It may take a portion of his property by way of taxation for the support of the government. It may control the use and possession of his property, so far as may be necessary for the protection of the rights of others, and to secure to them the equal use and enjoyment of their property. The doctrine that each one must so use his own as not to injure his neighbor—*Sic utere tuo ut alienum non lædas*—is the rule by which every member of society must possess and enjoy his property; and all legislation essential to secure this common and equal enjoyment is a legitimate exercise of state authority. Except in cases where property may be destroyed to arrest a conflagration or the ravages of a pestilence, or be taken under the pressure of an immediate or overwhelming necessity to prevent a public calamity, the power of the State over the property of the citizen does not extend beyond such limits.

"It is true that the legislation which secures to all protection in their rights, and the equal use and enjoyment of their property, embraces an almost infinite variety of subjects. Whatever affects the peace, good order, morals and health of the community, comes within its scope; and everyone must use and enjoy his property subject to the restrictions which such legislation imposes. What is termed the police power of the State, which, from the language often used respecting it, one would suppose to be an undefined and irresponsible element in government, can only interfere with the conduct of individuals in their intercourse with each other and in the use of their property, so far as may be required to secure these objects."—*Munn v. Illinois*, 94 U. S. 113-154

According to Blackstone¹ real property is "such as is permanent, fixed and immovable, which cannot be carried out of its place. . . ." Personal property is also defined as "goods, money and all other movables which may attend the owner's person wherever he thinks proper to go." Real property is always corporeal; personal property may be either corporeal or incorporeal. Real property originally included land, houses, and such things as were attached to the land; personal property, on the other hand, at first included chiefly cattle, weapons, and household utensils. The great development in modern times has been the increase of personal property, particularly of an incorporeal nature. Thus, much of our wealth is in stocks, bonds, mortgages, and other evidences of rights which the owner may possess.

3. CRIMINAL LAW

A tort, according to Blackstone, is a private wrong, "an Crimes and torts infringement or privation of the civil rights which belong to individuals considered merely as individuals." A crime or a public wrong is a "breach and violation of the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity."² In spite of such high authority these definitions hardly bring out the real distinction between a crime and a tort. Both are wrongs which an individual commits. The true distinction is better shown in the respective modes of redress allowed by law. When the state on its own responsibility and in its own name is empowered by law to prosecute and punish an act, that act is a crime. When, however, an act renders the doer liable in damages to the person or persons wronged, such an act is a tort. A crime, therefore, may be defined as an act or omission so far contrary to public policy that the person guilty thereof is punished for it by and in the name of the sovereign body. Thus a crime may also be tort. For example, if A knocks down B this is assault and battery, and B may sue A for damages. Considered in this light the act was a tort, but A's act may also be

¹ Commentaries, Bk. II, p. 15.

² Ibid. Bk. IV, p. 5.

considered as disturbing the peace and may be prosecuted and punished by the state. Regarded from this point of view, the act was a crime. In many states the statutes allow civil action; that is, suit for damages for wrongs which the state may punish as crimes.

Classifica-
tion of
crimes:

Treason

In general, crimes are classified by the law, as treason, felonies, misdemeanors, in order of their enormity.

Treason is defined by the Federal Constitution and the constitutions of the states as levying war against the state or adhering to the enemies or giving them aid and comfort. The crime of treason is regarded as a fundamental attack upon the existence of the state itself and thus is put in its own category.

Felonies

According to English common law a crime was a felony if punishable by death. Since the restriction of the death penalty and its abolition in some states, this distinction is no longer valid. In the jurisprudence of the states the statutes define all the felonies which were formerly considered as felonies by English common law and add to this list many crimes whose enormity seemed to justify severe punishment. These are called statute felonies.

Common-
law and
statutory
felonies:

Without attempting a complete enumeration of the common-law and statutory felonies, the more important are the following:

(1) Murder

Murder is the unlawful killing of a human being with malice aforethought. It is to be distinguished from homicide, which means the killing of any human being. Murder, however, involves, first, unlawful killing as distinguished from an execution ordered by the state; second, and its most distinguishing characteristic, it must be with malice aforethought. This is a technical expression which may be defined as including a disregard of the rights of the victim and the duty owed to society and an intent to commit some crime. This crime in itself need not be homicide. For example, if a person in the attempt to commit robbery unintentionally kills another person, the act is murder. In many states murder has been divided into various degrees, according to the circumstances of the homicide.

(2) Man-
slaughter

Manslaughter is unlawful homicide without malice aforethought. It may be voluntary or involuntary. Voluntary manslaughter is intentional homicide in a sudden passion caused by

adequate provocation, but without malice aforethought. Involuntary manslaughter is homicide without malice and without intention. This may be caused, first, by the performance of some unlawful act not amounting to felony nor ordinarily tending to cause death, such as an assault from which unexpected death may result. For example, if A strikes B, and in falling B fractures his skull on the pavement, A's act would probably be classified as involuntary manslaughter. Second, involuntary manslaughter may also be the result of the negligent performance of some lawful act; as, for example, the careless driving of a motor car. Third, it also may result from the negligent omission to perform a legal duty; as, to give warning before the explosion of a blast or to neglect to set the signals at a railroad crossing.

At common law, arson is the willful and malicious burning (3) Arson of a dwelling-house or outhouse of another. It is not arson for a man to burn his own house nor is it arson for a man to burn another's house at his request in order to defraud the insurance company. By statute the burning of other buildings, such as shops and warehouses, is made arson.

The common-law crime of burglary is very carefully defined. (4) Burglary It is the breaking and entering of the dwelling-house of another in the nighttime with the intent to commit felony therein, whether the felony is actually committed or not. Five elements must be present to constitute this crime. (1) There must be some breaking of the house. Entrance through an open door or window to commit felony is not burglary. The latch must be turned or the window raised or even an unlatched door must be pushed open to constitute breaking. (2) There must be some entry, although this may be of the slightest; for example, the pushing through of an arm or gun or hook for the purpose of taking goods. (3) The house must be a dwelling-house, but most states by statute make it burglary to break and enter, with felonious attempt, buildings other than dwellings. (4) The breaking and entering must be in the nighttime; that is, "between the time when the countenance ceases to be reasonably discernible and the time when the countenance becomes discernible." (5) Both the breaking and entering must

be with the intent to commit some felony, although the felony itself may not actually have been committed.

- (5) **Larceny** Larceny is the taking and carrying away of the personal goods of another with the intent to steal. This is an extremely technical crime, but involves various essentials. (1) The thing taken must be the personal property of another—that is, (a) it must be personal, not real property; (b) it must be what the state recognizes as property; (c) it must be owned by another. (2) It is necessary that the property must be carried away from the place which it occupies. Any removal, however slight, is sufficient. (3) There must be an intent to deprive the owner of his property; that is, to steal. This intent must exist at the time of the taking, and the taking must be without the right of claim. Larceny is divided into grand and petit larceny according to the value of the property stolen.

- (6) **Robbery** Robbery is an aggravated form of larceny. It involves all the elements of larceny as described above and, in addition, the property must be taken from another's person or in his actual presence. Moreover, the property must be taken either by violence or by inciting fear. Thus a pickpocket is guilty not of robbery but of larceny.

Common-law misdemeanors: The crimes which follow were classified as misdemeanors by English common law, although in many states some of these crimes have been raised to the rank of felonies.

- (1) **Conspiracy** Conspiracy is the combination of two or more persons to commit an unlawful act. In general the offense is divided into three heads: (1) where the end to be obtained is in itself a crime (as, for example, the combination of two or more persons to commit a felony such as murder or any misdemeanor); (2) where the object is lawful, but the means by which it is to be obtained is unlawful; (3) where the injury to the third person, if inflicted by a single individual, would be a civil wrong and not a crime. The germ of conspiracy is an unlawful combination, not the overt act.

- (2) **Assault and battery** Assault is the threat of force or violence to do corporeal hurt to another. Battery is the unlawful touching of the person of another by the aggressor or by some substance put in motion by him. An assault may not result in battery, but

every battery necessarily includes an assault. Thus, for example, to shoot or strike at another and to miss him is assault but not battery. To shoot or strike a person is assault and battery.

False imprisonment is the unlawful restraint of another person's liberty. There must be actual restraint of the liberty of the person. This may be in a jail or a private house, or even by merely detaining him on the street. (3) False imprisonment

A common nuisance is the creation or maintenance of conditions which are prejudicial to the health, comfort, safety, property, sense of decency, or morals of the community at large. This act must result either from the neglect of a duty imposed by law or from an act not warranted by law, and must affect the community at large and not merely a few individuals. (4) Nuisance

By common law, forgery is a misdemeanor, but every state has made it a felony. It consists in the false making or altering, with intent to defraud, of any writing which might be the foundation of a legal liability, or the altering of writing to the prejudice of another man's rights. To constitute the crime the alteration must be false, with the intent to defraud; the instrument must apparently impose a legal liability; and the alteration must be material. Uttering consists of the offering directly or indirectly of a forged instrument. (5) Forgery and uttering

Any willful and unjustifiable disturbance of the public peace which violates public order is a breach of peace. Any public act of indecorum is also a breach of peace. (6) Breach of peace

An unlawful assembly takes place where three or more persons meet (1) with the intent to commit a crime by open force or (2) with the intent to carry out a purpose, whether lawful or not, in such a manner as to give a firm and courageous person reasonable grounds for apprehension that a breach of peace will ensue. A riot exists where an unlawful assembly has actually begun to execute its purpose by a breach of peace and to the terror of the public, or where a lawful assembly proceeds to execute an unlawful purpose to the terror of the people. To constitute these crimes at least three persons must assemble. (7) Unlawful assembly and riot

(8) Libel

In general, libel is considered as the malicious publication of any writing, picture, or representation tending to expose another person to hatred, contempt, or ridicule. It applies both to the defamatory matter published and to the offense of publication. The law regards it as a crime against the public peace, because the publication of a libel may incite a breach of peace; therefore, in the prosecution for a criminal libel the truth of the publication is not a defense unless made so by statute.

In addition to the foregoing, the laws of the states have made many other acts either crimes or misdemeanors.

4. TORTS

Definition

A tort is a private or civil wrong or injury. More broadly, a tort may be defined as a breach of legal duty or a violation of another's right for which the injured party may maintain an action at law for damages.¹ A tort is always a violation of a right *in rem*; that is, a right which a person holds as against the whole community. A tort, moreover, at once gives rise to a right of action *in personam*; that is, against the person committing the damage. Thus the moment a right *in rem* is violated, a new relation is set up between the possessor of the right and the wrongdoer. The possessor of the right obtains the right of action for damages for the injury to his rights. As has been shown, torts are to be distinguished from crimes by the theories of the objects of the wrong and by the remedies. A crime is punishable by state prosecution, a tort gives rise to a private claim for compensation by damages. A tort, furthermore, is to be distinguished from a breach of contract. A tort, as has been said, is a violation of a right *in rem*; that is, it is a breach of general legal duty created and enforced by law. A breach of contract, however, is a violation of a right *in personam*, created by voluntary agreement but enforced by law; that is, of the specific obligation set up by the contract. This may be illustrated as follows: A person becomes a passenger on a railway car, thereby entering into a contract for safe carriage.

¹W. L. Clark, *Elementary Law*, pp. 131-132.

Through the negligence of the railway company the person is injured. Has he suffered a tort or a breach of contract? The railroad company might contend that it was merely a breach of contract for which the plaintiff might recover his fare. The courts, however, have decided that the railway company owes to the general public, and to the plaintiff in particular, the duty of exercising care and thus holds that injury, arising through negligence, is not merely a breach of contract but a tort as well.

It is extremely difficult to make a complete and satisfactory classification of torts. The following classification, which is abridged and adapted from Sir Frederick Pollock, will give some idea of the extent of the subject. Torts may be classified on a threefold basis, according to their scope and effect. Certain wrongs affect the safety and freedom of a person. These may be classified as personal torts. Others may merely affect property, and thus may be classified as torts against possession and property. Others may affect persons or property or both.

Classifica-
tion of
torts:

(1) Under personal wrongs should be mentioned assault and battery and false imprisonment. Both of these are common-law crimes and punishable by the state. But as they also violate a personal right, the aggressor has committed a tort for which the injured party may claim damages. (2) Wrongs affecting the personal relations in the family. These include the actions which a husband or parent or employer may maintain for the loss of services or expense resulting from a tort committed upon his wife, child, or employee. Thus a husband may bring a suit for damages against a railroad company in whose cars his wife has been injured, or may sue another person for the injuries his child sustained because of assault and battery. (3) Wrongs affecting reputation, or defamation. This is slander and libel. Slander is the defamation of a person by words or gestures; libel is the defamation by writing. In order to make defamation a tort, publication is necessary. Defamation may apply either to persons or to things. Applied to things, it is called slander of property or title. (4) Deceit is the making of a false statement by a person who knows its

(1) Personal
wrongs

falsity, or recklessly disregards whether it be true or false, to a person who innocently acts upon such a statement and thereby suffers damage.

(2) Wrongs
to posses-
sion and
property

The most important of the wrongs to possession and property, and the one of the widest interpretation, is trespass. In its widest legal sense trespass includes any wrong to the person or property of another committed by force. Generally, however, a wrong committed to the person by force is known as assault and battery; and trespass, in its narrowest sense, applies only to the forcible violation of corporeal property. Trespass is thus the wrongful and forcible disturbance of another's possession of goods or lands. It includes everything from the peaceful entry upon unfenced land to the forcible destruction or injury of real or personal property, the latter being known as trespass *vi et armis* (with force and arms). Any invasion of property rights, however minute, is trespass. The gist of wrong in trespass is the disturbance of possession.

(3) Wrongs
to person,
estate, and
property
generally

Wrongs to person, estate, and property are twofold. (1) Nuisance is the violation of the legal golden rule covering property, *Sic utere tuo ut alienum non lædas* (Use your own so as not to injure that of another). It consists in doing anything wrongfully or permitting anything to be wrongfully done which interferes with or annoys another person in the enjoyment of his legal rights. The plaintiff must have a legal right, and it must be proved that the defendant has wrongfully or illegally committed or allowed to be committed a wrongful act. The nuisance may be committed against property, both personal and real, corporeal and incorporeal, and against the personal enjoyment of health and comfort. Continuous and excessive noise may constitute a nuisance. Vapors and noxious smells which destroy vegetation are nuisances. Even if they do not destroy vegetation but render life unhealthy or even uncomfortable, they are regarded as nuisances. There are three private remedies for a nuisance: (a) abatement by act of the party injured—thus, where the branches of a tree extend over the land of another person these may be cut and trimmed; (b) an injunction may be sought through proceedings in equity; (c) an action for damages

may be begun in the courts. (2) Negligence. There are three essential elements to negligence. The first is failure to exercise commensurate care and diligence. If this failure is something more than merely inadvertence, the action will lie for something more than negligence. Second, a breach of legal duty must be involved; that is, the sufferer must have a legal right violated through the carelessness of the wrongdoer. Finally, damage must result.

5. CONTRACTS

Chief Justice Marshall defined a contract as follows: "An Definition agreement in which a party undertakes to do or not to do a particular thing."¹ More extensively, a contract has been defined as "an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others."² Briefly, a contract is "any agreement involving legal obligation." To be valid a contract generally possesses five essentials: (1) There must be an offer and acceptance; that is, one party must offer to perform or refrain from performing a certain task and the other party must accept this offer. (2) The agreement must be made in the form prescribed by law. For most contracts no particular form is necessary, and an oral contract may be as binding as a written one. Other contracts, however, like the sale of real estate or of goods worth more than a certain amount, or a contract which is not to be performed within a year, must be written in the forms prescribed by law.³ (3) The parties must be capable in law of making a valid contract. Thus a minor may not make a contract without the assent of his parents. In some states a married man may not dispose of his real estate without the consent of his wife. (4) The consent expressed in the offer

¹4 Wheat. 197.

²W. L. Clark, *Contracts* (3d ed.), p. 2.

³Every simple contract requires a "consideration"; that is, something which moves from the promisee to the promisor in return for his promise. This consideration need not be a payment of money, but may be some benefit which is deemed of value in the eyes of the law.

and acceptance must be genuine; that is, there must be no fraud or misunderstanding. (5) The objects and purpose of the contract must be legal. Thus a contract to commit crime is illegal, and no obligation can be maintained for such a contract. In like manner, agreements which, although they do not violate any positive law, may be contrary to public policy are thus considered nonenforceable. Thus, all gambling transactions, agreements by which a parent deprives himself of the custody of his child, agreements in unreasonable restraint of trade to prevent competition, to control prices, or to create monopoly, and agreements exempting a person from liability for negligence are unenforceable in the courts.

Particular
contracts

It is almost impossible to classify the infinite variety of contracts which may be made, but a few types may be mentioned. (1) Sales. A contract for sale is the agreement to transfer the title to goods or lands. (2) Bailments. A bailment may be roughly defined as the delivery of the mere possession of a piece of personal property for a particular purpose. This delivery is accompanied by a contract, either expressed or implied, by which the terms and conditions of the delivery of the property are specified. A good example is the delivery of a watch to a jeweler for repair. The implied contract is that the jeweler agrees to keep the watch safely in order to repair it and to return it to the owner when called for. On the other hand, the owner agrees to pay for the service performed. (3) Negotiable instruments. These form a most important and highly specialized type of contracts. Under this heading are included promissory notes, checks, drafts, bills of exchange, and so forth. The chief characteristic of a negotiable instrument is that it may be transferred from one owner to another by mere delivery or indorsement. Such indorsement gives the transferee the right to sue in his own name as if he were the original owner. Another characteristic is that although a negotiable instrument may be obtained by fraud, if it is transferred to an innocent party for value received the latter may sue upon it as if it had been obtained without fraud. (4) Other types of contracts are guaranty contracts, by which one party becomes answerable for the performance of some duty or contract of

another; suretyship, by which one party becomes responsible for the debt; default or miscarriage of another; and insurance, by which a person or corporation agrees to compensate another for loss.

6. DOMESTIC RELATIONS

Marriage may be defined as the voluntary union between one man and one woman to continue through life or until dissolved by judicial decree. In the United States and other Christian countries this is the only type of marriage recognized, although under the Mohammedan religion polygamy may be practiced. According to common law no particular ceremony is necessary for marriage. In most states, however, certain formalities are prescribed; for example, a license must be obtained, the ceremony must be performed by a justice of the peace or by someone authorized to perform marriages, and the marriage must be recorded. In North Carolina, however, not only must these formalities be complied with but the contracting parties must present medical certificates showing that they are in proper health, both physical and mental. In spite of these statutes many states regard common-law marriages as valid; that is, a mere agreement between a man and woman to live as husband and wife, followed by actual living together as husband and wife.

No marriage is considered valid unless the parties are capable of entering such a status. These limitations are generally prescribed by statute and vary in different states. In general, the parties must be single—that is, not possessing another husband or wife; they must be of the age prescribed by the state statute; they must not be related within the degrees of relationship forbidden by the state; they must have sufficient mental capacity.

The contract of marriage differs from other contracts. All other contracts may be terminated by mutual consent. Not so marriage. The contract of marriage sets up a status which can only be terminated by the death of the husband or wife or by judicial separation. In all the states except North Carolina termination of marriage is allowed by judicial procedure—

divorce. The causes for divorce vary in different states. In New York, for example, absolute divorce is granted only on the ground of adultery. In other states cruelty, desertion, drunkenness, and even incompatibility are recognized as causes for divorce. Different states require varying periods of residence within the state in order to obtain a divorce under the laws of the state. These periods differ from six months in Idaho and Nevada to from three to five years in Massachusetts. As a result of these variations in the state laws it is possible for one party to obtain a residence within a state having lax divorce laws and divorce the other party. Such divorces, however, are not always recognized within the state where the parties actually live.

Common-law relation of husband and wife, parent and children

According to the English common law the wife has no separate existence apart from the husband. She can have no separate property and is in every way subject to the control of her husband. In turn, the husband is liable for all her debts and torts. This common-law practice has been greatly mitigated, both by English statutes and by the laws of the various states. Today it may be said that in certain states the status of a married woman is more privileged than that of her husband. She may possess property, both real and personal, apart from her husband, who, however, remains liable for her debts and torts. Either the husband or wife may sue a third party for a tort which deprives one of them of the society or services of the other. In like manner the relationship between the parents and children originally set up by English common law has been greatly mitigated. Parents still may control the lives of their children, but subject to most strict regulation by the states. Parents or guardians, moreover, may gain damages from other parties for torts which their children have suffered.

7. PARTNERSHIPS AND CORPORATIONS

Partnerships

A partnership is a contract between two or more persons to do business as individuals on joint, undivided account. In a partnership every member of the firm, unless restricted by some agreement, is entitled to full management and control of the

business and property of the partnership. One partner can do nothing without the agreement of the other partners, and one partner may prevent any action by the other partner or partners. In case the partners fail to agree the only remedy is a dissolution of the partnership. All partners are liable to the full extent of their property for the torts and debts of the partnership, and any person, although not formally admitted to the partnership, whose relations to it may give other persons reason to believe that he is a partner may also be held liable.

In most states the law permits partnerships to be established by which the liability of the members is limited to some specific amount. In such cases the fact must be notified to the public by publication in the papers and the use of the word "limited" with the name of the firm in all advertising matter and in correspondence.

Limited
partnership

Partnerships generally exist for pecuniary gain. Voluntary associations are unincorporated groups of people who are joined together not for the purpose of gain but for the promotion of some specific purpose. Common examples of this type of association are clubs, churches, and literary and charitable organizations. All members of the association who sign the constitution or by-laws are held liable for the torts and debts of the association incurred by the officers designated by the constitution to incur these debts. Where no such designation is made, all members of the association who favor the incurring of a liability or the performance of an act are held responsible for it.

Voluntary
associations

A joint-stock company is an unincorporated association organized for business purposes. It differs from a partnership in that the stock is transferable at the will of the members. In a partnership no new partner can be admitted without the consent of the other partners. Members of joint-stock companies have the same liabilities as members of partnerships.

Joint-stock
company

A corporation is a body of natural persons established by law, usually for some specific purpose, and continued by a succession of members. A corporation differs from a partnership, a voluntary association, and a joint-stock company in that

Corpora-
tions

it possesses a distinct legal entity apart from the entity of its members. That is, a corporation is a legal personality. It may sue and be sued, contract debts, commit torts, incur liabilities, and suffer wrongs like any other legal person and apart from its members. Being an artificial person, only bodies having some degree of sovereignty may create corporations; that is, only the federal government or the governments of the states. Originally every corporation was created by a special legislative act. Many corporations are still so created. The more common practice, however, is for the legislature to pass certain general laws allowing persons under specific conditions and for specific purposes to form themselves into a corporation. When these requirements have been complied with a charter is issued by the proper state authority, and the corporation becomes a legal entity. According to Chief Justice Marshall's decision in the *Dartmouth College* case, a charter of incorporation is a contract, and thus no state may pass a law "violating the obligation of this contract"; that is, changing it by amendment or resuming it in any way. To avoid the complications thus arising, practically all the constitutions of the states declare that no charter shall be issued to any corporation unless the right is specifically reserved to the legislature to amend, revise, or resume such a charter. Membership in a corporation is generally obtained by the purchase of one or more shares of the corporation. The shares are known as stock in the corporation, and the holders as stockholders. A stockholder of a corporation has the right of ownership of the share or shares in the company's property to which his certificate entitles him. He furthermore has the right to cast a vote for each share he owns in electing the officers or management of the corporation or in the determination of such affairs as are submitted to the stockholders. Generally the stockholder is liable only for the face value of his stock certificate; that is, he has no further liability beyond the amount of money he has paid into the corporation. In some cases, however, particularly in banks, stockholders are liable for twice the face value of their certificates. This is called double liability. The affairs of a corporation are generally

managed by a board of directors, chosen by the stockholders, or a board of trustees. This board, in turn, elects certain executive officers, who carry out the policies of the corporation under the supervision of the board of directors. Corporations may exist either in perpetuity (that is, without time limitation) or they may be limited by statute.

8. REMEDIES

As has been seen, law concerns itself with the creation and definition of legal rights and with the provision for the enforcement of these rights and the redress of wrongs. Substantive law is concerned with the determination of legal rights, adjective law with the enforcement of remedies when the rights of substantive law are violated. These remedies may be either extra-legal or legal remedies.

Extra-legal remedies are of three sorts: (1) Those applied by the sole act of the injured person. This class includes self-defense, which has already been discussed, and which means that the injured party whose right is threatened may repel the anticipated wrong. He may defend his person, or his wife and children, or even his property. In the defense of his life he may use any amount of force, even to the extent of taking the life of another person, but in the defense of property human life may not be taken. (2) Another extra-legal remedy is that of recaption, which means the retaking of persons and personal property by those who have a legal right to do it. A similar right with regard to real property is that of entry, by which a person wrongfully excluded from his property may enter and take possession of it. Neither recaption nor entry may be used in such a way as to disturb the public peace. Another extra-legal remedy is the abatement of a nuisance, which has already been described. (3) The last extra-legal remedy is distress, by which the injured person takes a personal chattel belonging to the wrongdoer. In this country it is generally confined to two cases—that of a landlord taking property for unpaid rent, and the taking of cattle which have strayed and committed damage upon the land of another.

**Legal
remedies**

Legal remedies may be divided into penal and civil remedies. Penal remedies are those applied by the state for the punishment of a crime, and usually take the form of fines, imprisonment, or capital punishment. Civil remedies are of two sorts: those granted by the courts of common law and those granted by procedure in equity.

**Ordinary
common-
law
remedies**

Common-law remedies in general are of two kinds—restoration and damages. Restoration is the means by which a piece of property or a right is restored to the owner in pursuance with a judgment of a court of law. In many instances the property or right cannot be restored in the form it was taken. Therefore the court may award a monetary compensation. This compensation is known as damages. Damages may be nominal; that is, a small sum, designed to be a public recognition of the right claimed. These are awarded when there is no appreciable loss. Compensatory damages are designed to compensate or to make good the loss or wrong suffered. These are awarded where an appreciable loss has been suffered. It is extremely difficult to estimate exactly the pecuniary loss in many instances, and a great mass of law exists upon the measure of such damages. Exemplary or punitive damages are money payments which are awarded as punishment for the wrongdoer where malice is evident.

**Extraordi-
nary com-
mon-law
remedies
Mandamus**

There are four classes of legal writs issued by the courts. The writ of mandamus is an order issued by a court commanding an officer, a corporation, or a court to perform some legal, ministerial duty, or a duty not involving discretion. An information in the nature of a *quo warranto* is a writ issued by the court in order to compel a corporation or an officer to show by what authority certain functions are performed. It is used to test the validity of incorporations and of elections, respectively. The writ of habeas corpus may be issued by a common-law court, directing that a person in confinement be brought before the court so that the legality of his commitment may be passed upon. A writ of prohibition may be issued by a superior court to an inferior court prohibiting the inferior court from proceeding. This is generally issued to protect the jurisdiction of the court.

Quo warranto**Habeas
Corpus****Prohibition**

As has been shown, the purpose of equity is to accomplish Equitable remedies justice by supplementing the inadequate rights recognized or remedies allowed by common-law courts. The ordinary means Injunction by which this is done is through the writ of injunction. A writ of injunction is an order issuing from a court having equity jurisdiction and commanding a person to do some act or to refrain from doing some act. In the first instance it is known as a mandatory injunction; in the second, as a prohibitory injunction. It should be remembered that equity may not be resorted to unless it can be shown that legal remedies are inadequate.

CHAPTER XIV

THE JUDICIAL SYSTEM OF THE STATES

Importance
and func-
tions of
state courts

State courts administer the law of the state. By that is meant the legal system described in the previous chapter. This includes both equity and law, both civil and criminal law, both common and statute law. The state courts are thus the most important legal agencies in the life of a citizen. His entire domestic relations are determined by state law and administered by the state courts. The right and use of his property are determined by state law and protected by state courts. Only when a state attempts to deprive a citizen of his property without due process of law, when a person violates a federal statute, or when for some reason—such as diverse citizenship—one of the parties has a right to ask it, do the federal courts intervene. The state courts administer the police laws of the state. The state courts are the ones to which a citizen ordinarily appeals when he feels that he is wronged in any right. The state courts enforce his business claims in the commercial relations which he maintains. It is true that Congress through the interstate commerce clause of the Federal Constitution is passing more and more laws for the regulation of interstate and foreign commerce, yet generally a man appeals to his state courts for the enforcement of his personal commercial rights and obligations. The state courts administer all questions of inheritance and estates. Finally, the criminal law, under which every citizen lives, is administered in a large part by the state courts. In general, it may be said that a citizen appears before the federal courts only when he seeks the protection of or is found violating a federal law, such as the act creating the Interstate Commerce Commission, the Federal Trade Commission or regulations thereunder, the Pure Food and Drugs Act, or the Volstead Act. In addition, when a citizen feels that the law of the state or

the action of the state court has deprived him of some right of his liberty, life, or property, without due process of law, or when the obligation of some contract has been violated, he may appeal from the highest court of his state to the federal Supreme Court. Perhaps most important of all, should a citizen of one state be involved in a controversy with a citizen of another state the case may be tried by the federal courts. Thus, since the greater part of the life of a citizen is determined by state law, the state courts are the ones with which he is most concerned.

CLASSIFICATION OF STATE COURTS

The structure of the courts in each state is entirely under the control of the citizens of the state. The Federal Constitution makes no provision for any state judicial system. A system of courts, however, is assumed, and this assumption is but an example of the federal structure of the national government. The Constitution and the acts of Congress recognize the existence of state courts and provide for appeals from them, but each state is left to determine its own system. Thus, there is little uniformity to be found in the judicial systems of the various states. The courts in the different states bear different names, and frequently courts of the same name have different jurisdictions. Nevertheless, all the states have, under various names, a system of at least four courts.¹

The judicial system of the states determined by state constitutions and statutes:

In every state justices of the peace have jurisdiction over petty offenses both civil and criminal. In every instance the jurisdiction of these justices is strictly limited—in civil affairs to cases involving only a small amount of property, rarely more than fifty or one hundred dollars; in criminal cases to the disposition of petty misdemeanors, punishable by fines and, perhaps, by short terms of imprisonment. Justices of the peace hear cases without the assistance of a jury; hence appeal may be taken to a higher court with a jury. These justices of the peace, moreover, are the officials before whom persons charged with serious crimes and felonies are brought. Although the justice

(1) Justices of the peace

¹See Simeon E. Baldwin, *The American Judiciary*, chap. viii.

has no right to make final disposition of the case, he may discharge or commit the accused to prison to await the action of a higher court. In cases not involving murder he may release the accused on bail. Many writers have regarded these justices of the peace as the weakest part of the judicial system. Frequently they are ignorant of the law. Occasionally they have been found to be guilty of favoritism and graft. They have one advantage, however, in the fact that although they may be ignorant of the law, they generally know the suitors before them. Although they may fail at times to administer the law, they generally administer justice.

[Municipal
courts]

Special courts are established in towns and cities. These courts are presided over by a justice of the peace or a judge and provided with a clerk. Their jurisdiction is confined to petty cases in civil affairs and to the punishment of misdemeanors arising from the violation not simply of the state statutes but of the municipal ordinances. These courts are of greatest importance, not because of the amount involved in the cases or the seriousness of the prosecutions brought before them but because they are the courts with which the poor, the ignorant, and the unfortunate first come in contact. It is from these courts that the immigrants and foreigners get their first and perhaps sole idea of justice. A wise and sympathetic justice of the peace or municipal judge may frequently, by his disposition of the case before him, accomplish more than the penal or reformatory agencies of the state could possibly do.

(2) Inter-
mediate
courts

In every state there is a court above the justice of the peace to which appeals may be carried and which has generally unlimited jurisdiction both in criminal and civil affairs. This court is variously named the county court, the district court, the circuit court, or the superior court. By whatever name the court is called, its characteristics are everywhere the same. It is presided over by a judge, provided with a clerk, and has a sheriff and his subordinates to enforce its decree. It is the court before which the grand jury is impaneled, and it is the court to which the grand jury presents its indictments. Determination of matters of fact are made not by the judge but by the petit jury. This court generally has, by means of this

jury, the final determination of all questions of fact. In some states this court is limited in its jurisdiction over the most serious crimes, which are tried before a special court.

Originally in the United States, particularly in the South, the justices of the quarter sessions acted as a county court. ^(County courts) This court had both judicial and administrative functions. It not only heard cases in law but was charged with the supervision of county affairs, particularly with the maintenance of roads and bridges, the supervision of the jail, and the care of the county poor. In most states the administrative functions of this court have been vested in county supervisors or administrative boards.¹ In Kentucky, Tennessee, and Arkansas, however, the county-court justices continue to exercise both judicial and administrative power. In Missouri and West Virginia the county courts have no judicial power, and in Vermont the administrative duties of the county commissioners are performed by assistant judges of the county court.

All states have special courts dealing with the proving of wills and the administration of estates and, in some states, with certain matrimonial questions. In general there is a probate court for every county in the state, and in the course of a generation the whole personal and real property of all the citizens must pass through this court. The value of the estate must be declared and its disposition made according either to common or statutory law or to the will and testament of the deceased. ^{(3) Probate courts}

Every state has an appellate court, sometimes more than one. In every state, however, there is a court which has the final jurisdiction on questions of law. These courts are variously designated as supreme courts or courts of appeal. In some states there are found both supreme courts and courts of appeal, which gives to the citizens a double appeal. The courts of final adjudication are not engaged in the determination of facts, but in the examination of whether the law and the rights of the litigants as determined by the constitution and the law have been properly guarded. Questions of procedure, of evidence, and of interpretation are presented before this court. It ^{(4) Appellate courts}

¹ See pages 325-326.

has little original jurisdiction, but acts upon appeals resulting from writs of error, of prohibition, and the like. This court is the final interpreter of state statutes and state constitutions unless they are held to conflict with the Federal Constitution or an act of Congress. Until 1916¹ there was no way of questioning the decision of these courts if a state law was declared unconstitutional by reason of its conflict with a federal statute or the Federal Constitution. This resulted in divergent practices in the different states. Occasionally a law would be held constitutional which the appellate courts of another state would declare was in direct violation to the Federal Constitution. In 1916 this was remedied by allowing an appeal from the appellate court to the United States Supreme Court in cases where the state act had been declared to be in conflict with the federal law or Constitution.

Special
courts

There are numerous special courts established in different states. Some of the more interesting of these are the juvenile court, the court of domestic relations, the land court, and the small-claims courts.²

The juve-
nile court

The idea of a juvenile court originated in South Australia in 1890.³ At about the same time New York and Massachusetts passed certain statutes providing for the separate hearing of children's cases. In 1899 the juvenile court of Cook County, Illinois, was established on the basis of a bill drawn by Judge Harvey H. Hurd from the original plans of Dr. Hastings H. Hart. In 1901 the Denver court was established and became famous through the administration of Judge Ben B. Lindsey. There are at present juvenile courts in more than half of the states.

¹ See pages 275-276.

² Some of these courts are well described by R. H. Smith, "Justice and the Poor," *Bulletin No. 13* of the Carnegie Foundation for the Advancement of Teaching.

³ See H. H. Hart, *Preventive Treatment of Neglected Children*, also *Juvenile Court Laws in the United States* (summarized). Judge Ben B. Lindsey's "My Lesson from the Juvenile Court," in the *Survey*, February 5, 1910, pp. 652-656, is devoted entirely to this question. See the *Proceedings of the National Conference of Charities and Corrections*, the *American Year Book for 1910*, also *Cyclopedia of American Government*, Vol. I, p. 500.

The purpose of the juvenile court is to care for (1) neglected children who are before the court because of some omission on the part of their parents, and (2) delinquent children—that is, those who have offended against the law. In general the jurisdiction of this court is confined to children of sixteen years of age or under, although in some states the court has jurisdiction of children as old as eighteen. The creation of the court was the acknowledgment of the duty of the state to protect and aid the child and direct him along the lines of proper development. With this in mind emphasis is laid upon the correction of conditions responsible for the child's wrongdoing, rather than upon the act of the child itself. The legal principles from which the court derives its jurisdiction are found in the decisions of the English chancellors in administering equity. From time immemorial it has been held within the power of the state to take from the supervision of the parent a neglected child, to appoint guardians for it, and to make such guardians responsible to the court. The modern laws with regard to juvenile courts go one step further and give the courts jurisdiction not simply of neglected or dependent children but of delinquent or offending children. This is done simply by raising the age below which a child shall not be treated as a criminal. According to this principle the juvenile offender is not subject to a penalty for violation of the law, but may be compelled to make compensation, to report to the court, to be put on probation and under the supervision of some officer or guardian. As has been said, the theory aims to remedy conditions which produce the neglected or delinquent child rather than to punish him as an offender. Strictly, however, there should be no appeal from the equitable ruling of the judge to a higher court of law. Practically, however, this is advisable. It not only gives the parent, from whom the child may be taken, a right to appeal, but it checks the danger of arbitrariness on the part of the judge and probably leads to his greater and more sympathetic consideration in cases where the custody of the child is disturbed.

Purpose and principles of the juvenile court

In all juvenile courts, and in those courts which provide for the separate hearing of children's cases, a distinction is made

Procedure

between the ordinary criminal court and the children's court. In the best type of juvenile courts the ordinary paraphernalia of the courtroom is dispensed with. No uniformed officers are in attendance. The child meets the judge at a table and is questioned by him. Every opportunity is given the child to speak freely and without restraint, and, as Judge Lindsey has recently shown, the confidence of the child should not be abused by taking his testimony as a basis for criminal proceedings. To be effective a juvenile court must have a sufficient number of probation officers and visitors who may watch over the child and see that the directions or plans of the court are carried out. In extreme instances, for example where the parents have proved to be improper custodians of the child, the court may appoint a temporary guardian who shall act *in loco parentis*.

Domestic-
relations
court

In an increasing number of cities special courts known as courts of domestic relations have been established.¹ The object of these special courts is to give adequate and easy remedy in cases involving domestic relations. The use of civil remedy for the enforcement of separation allowances and the payment of alimony has proved to be slow and expensive. Consequently there is an increasing tendency to apply criminal remedies. The deserted wife may apply for a warrant for her husband and sue him criminally for nonsupport. If he is found guilty he is sentenced. Not infrequently the husband is put on probation and obliged to pay each week a portion of his wages to the probation officer for the benefit of his wife. The domestic-relations courts are also making more and more use of the principle of conciliation, attempting to settle the matrimonial disputes before separation occurs.

Small-
claims
courts

Some of the states² have established what are known as small-claims courts. These are generally branches of the municipal courts in the more important cities and provide a quick and easy method for the collection of small claims. Their jurisdiction is generally limited to small sums not usually

¹See R. H. Smith, *Justice and the Poor*, pp. 73-81.

²Illinois, Kansas, Ohio, and Oregon; see R. H. Smith, *Justice and the Poor*, pp. 41-60.

exceeding twenty-five dollars. The reason for the establishment of these courts was a realization that in many cases the poor were denied legal means to collect their claims because the expense of court procedure often exceeded the amount of the claim. In the small-claims court procedure is cheap and simple and no lawyers are employed.

In some states a system of land registration has been adopted and a special land court has been established for the determination of questions in connection with the administration of this law. This court is highly technical and hears but one type of case. It sits without a jury, and appeal generally lies to the intermediate courts (district, circuit, superior) on questions of fact and to the appellate court on questions of law. Land courts

In some of the large cities a special session of the police court is held during the night. This is for the purpose of disposing of petty offenses and of persons who are arrested without cause. It struck a blow at professional bondsmen and prevented the unjust retention of innocent persons in the station house overnight. Elsewhere a special court is established for the hearing and determination of offenses which women may have committed. Night courts

Women's courts

It should be reiterated that the courts of the states are not inferior to the federal courts. The state courts administer state law; the federal courts, federal law. In administering the law of the state the judgment of the state court is final unless it can be shown that the law under which the state court has acted, or its method of procedure, was contrary to some provision of federal law or the Federal Constitution. In such a case a system of appeal is provided. The process is rather technical, but briefly is as follows: The judgment of a lower state court can in no case be carried directly to the United States courts. The United States court will not act until the highest court in the state having jurisdiction has passed upon the case. Until 1916 an appeal could be taken from the highest court of the state only in cases where a question had been raised involving a federal right based upon the Constitution or treaty and the decision of the state court was against such federal right; or where a state law had been questioned on the ground Relation of
the state
courts to
the federal
courts

of its being in conflict with the Federal Constitution or an act of Congress and the decision had been in favor of the state law. This made it possible for the judiciary of the states to prevent appeal to the federal court by declaring a state law unconstitutional because of conflict with the federal law. As a result, in some states certain state laws were declared unconstitutional by the state courts, while in other states the constitutionality of similar laws was upheld both by the state courts and the United States Supreme Court. To remedy this Congress amended the Judiciary Act in 1916 and allowed appeals to be taken to the United States Supreme Court even if the state court had declared the state act unconstitutional. It is hoped that this will remedy the divergences which formerly existed in the application of the Federal Constitution and of acts of Congress to state legislation.

The effect
of the
Fourteenth
Amendment

The Fourteenth Amendment to the Federal Constitution greatly enhanced the appellate power of the Supreme Court of the United States. Since no state may deprive its citizens of life, liberty, or property without due process of law, and since every state must grant equal protection of the laws to all persons within its jurisdiction, the Supreme Court of the United States is frequently called to sit in judgment upon state legislation. It is a popular misapprehension that the federal courts, acting under this power, very frequently reverse the decisions of the state courts. It is true that this has been done in certain notable instances which have attracted considerable attention. In the vast number of instances, however, the court has left to the state legislatures the determination of what was wise and reasonable. Thus, in 1911 Justice Harlan said: "Much may be done by a State under the police power which many may regard as an unwise extension of governmental authority. But the Federal courts have no power to overturn such legislation simply because they do not approve or because they deem it unwise or inexpedient."¹ So, also, Justice Holmes has said: "When a state legislature has declared that, in its opinion, policy requires a certain measure, its action

¹ *Brodnax v. Missouri*, 219 U. S. 285.

should not be disturbed by the courts under the 14th Amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched."¹

THE STRUCTURE OF THE COURTS

1. *The Judge*

The judge of a court of law is a constant element found in every court. Without him there could be no court. The judge presides at the trial of the case; that is, the case is conducted in his presence and according to his directions. He does more than that—he applies the rules of law to the facts presented to him. In cases of summary jurisdiction this means that he hears the pleas, determines the facts himself, and gives the award or sentence. Where the judge is sitting with a jury, the jury determines the facts² and applies to these facts the law as set forth in the instructions given by the judge of his own motion or upon the request of counsel for the parties.³ The law which the judge applies may consist of rules of equity, of common law, or of statute law. These rules of law, however, are applicable not alone to the final determination of facts, either by the judge or the jury, but govern the entire procedure of the case. Thus a very important part of the functions of a judge is to see that the case is tried before him in accordance with the rules of procedure which are determined by law. This means that he must guard the rights of both the plaintiff and the defendant, or, in criminal law, the right of the state to prosecute and the right of the accused to present his defense. Thus the judge is constantly required to rule upon the admissibility of evidence and the methods employed by both sides in stating their cases.

The judge

¹*Missouri, Kansas, and Texas Railway Company v. May*, 104 U. S. 267.

²In some states the jury technically determines both the facts and the law.

³The jury may in either criminal or civil cases ask the judge for further instructions on points of law involved.

Method of
choice of
judges

In the colonies, as in England, the judges were appointed by the executive.¹ With the Revolutionary movement, however, and the revolt against the power of the executive, a more democratic method of selecting the judges was introduced. In some of the states the judges were chosen by the state legislature, and in 1812 Georgia was the first state to provide for the popular election of any of the judges, while in 1832 Mississippi provided for the election of all her judges by direct popular vote. Nevertheless some states (Massachusetts, for example) still vest the appointment of all the judges in the governor and council, and in other states—as in New Jersey—the appointment of the judges of the higher courts is in his hands. In the great majority of states, however, the judges are elected by the people.²

Relative
merits of
the methods
of selection:
(1) Popular
election

[Electorate
critical of
the judge as
an officer]

The method of the selection of judges by popular election is the most logical one from the point of view of popular sovereignty. It enables the electorate of a democratic state to control immediately all departments of the government—the lawmaking (that is, the legislature), the law-enforcing (that is, the executive), and the law-applying (that is, the judicial). And in a democratically governed state the electorate should have this power. Certain grave objections and qualifications to this statement must be made, however. Granting that popular election is the logical method theoretically, it can be shown that there are many practical objections to the exercise of this power by the electorate. The judges differ from most officials. In many instances their decisions are final unless revoked by a constitutional amendment. Their decisions, in many more instances, protect or punish the citizens of the state in their liberty and property rights, and in countless cases the decision of a judge may result in fine or imprisonment

¹See Judge Learned Hand, "The Elective and Appointive Methods of Selection of Judges," in *Proceedings of the Academy of Political Science*, Vol. III, No. 2, pp. 82-92; Simeon E. Baldwin, *The American Judiciary*, chap. xxii; A. N. Holcombe, *State Government in the United States*, p. 351; *Bulletins for the Massachusetts Constitutional Convention*, Vol. I, pp. 585-618, with references.

²In Rhode Island, South Carolina, Vermont, and Virginia the judges of the higher courts are chosen by the legislature.

or the award of damages. The judge is thus the most important state official in the application of the law. Because of this the judge, as an official, is subject to constant scrutiny and criticism. To give satisfaction his acts must be beyond suspicion of partiality and favoritism, whether personal, party, or political. The electorate demands more of its judges than it does of any other officer.

If the judges are chosen by popular election their selection is governed by the principles of other elections; that is, the judges must be candidates. As candidates they must be nominated by the party machinery, working either through conventions or direct primaries. The names of the judges as candidates must appear upon the ticket and, in most states, in the column devoted to the party. The judges will be selected by the majority vote of the people, cast as the electorate generally casts its vote; that is, by marking the party column or by marking more or less blindly the candidates which bear certain party designations or labels. The attention of the election ordinarily centers upon the executive or legislative candidates for public office, and popular interest is seldom aroused over the personal merits of the various candidates for judicial offices. Thus, it happens that the electorate generally ratifies the choice of the party managers for the judiciary. However critical the people may be of the actions of a judge as an officer, they are singularly careless in exercising their duty in the choice of the candidates.

[The electorate careless of the judge as a candidate]

The effect of this carelessness of the electorate is greatly mitigated by the influence of the bar. Lawyers must try their cases before the judges. It is therefore to their interest as well as to the interest of their clients that the judges should at least be able and that they should be sufficiently versed in law to make correct decisions which would not be reversed on an appeal to higher courts. The bar, through its various associations, therefore, frequently if not generally indorses certain candidates for judicial office. The influence of the bar is felt by party organizations and sometimes is conclusive with them. Only rarely, where a corrupt political machine is all-powerful or where a popular or demagogic candidate attains notoriety,

[Influence of the bar]

can the indorsement of the bar associations be safely neglected. This is only another way of saying that even in the case of popular elections the electorate really delegates the choice of their officers to some group.

(2) Election
by the
legislature

The selection of the judges by the legislature is open to even greater objections than is popular election. Once elected, the legislature, for practical purposes, is not responsible to the electorate so far as the choice of a judge is concerned. The members of the legislature are chosen for general political considerations on wide political issues and not solely for the purpose of choosing the judges. They are the product of the party machinery, and each member owes allegiance to the party. Thus, by appeals to party loyalty the managers of the party frequently force the choice of inefficient and even corrupt judges. It was partly because of this that the demand for popular election became so strong. It was felt, and rightly, that the party leaders before the election would be more susceptible to good influences than the members of the legislature after their election.

(3) Appoint-
ment by the
governor
with the
consent of
the council
or senate

The selection of the judges by the governor has much to commend it. It may be said that the governor is the product of the party system, is chosen for political reasons on wide issues, and is susceptible to the control of the organization and the machinery. All this is true. Yet the governor occupies such an important position and is so much in the public eye that his every act is subject to closer scrutiny and criticism than are the acts of the hundreds of members of the legislature. A strong executive—that is, one with a wide appointing power—carries an immense responsibility and thus is, in general, unwilling or afraid to make poor appointments. Moreover, it must be remembered that the same influences of the bar associations are operative upon the governor as upon the party leaders and perhaps with even greater effect. In every state where the governor appoints the judges, his nominees are subject to ratification by the council or senate. It is impossible to estimate the effect of this. At times in certain states the necessity for such confirmation may have prevented bad appointments. At times the governor may have been forced to

nominate a candidate the confirming body would accept. In general, observers deprecate limitations of this sort upon the governor's appointing power.¹ This does not mean that governors have not made poor appointments, but on the whole the testimony is that the judges appointed by them are generally of a higher type and of greater ability than those elected by the people.

The terms for which the judges are chosen vary from a few years to appointment for life. In Massachusetts all the judges are appointed by the governor for life. In Vermont, on the other hand, the legislature elects the judges for two years. The judges of the supreme court in Pennsylvania are chosen by popular election for twenty-one years; in New York for fourteen; in Illinois for nine. Perhaps the average judicial term approximates seven years. In many states a distinction is made between the judges of the higher courts and those of the lower courts, the tenure of the judges for the higher courts generally being longer. There is much to be said in favor of a long judicial tenure. It is generally conceded that the bar and litigants alike demand ability from their judges. This ability comes from experience and practice, and the judges are everywhere chosen from the practicing members of the bar. Since the compensation of the judges is rarely equal to the income which a first-rate practicing lawyer may obtain, lawyers of ability naturally hesitate to abandon their practice for the sake of a few years on the bench. Therefore, if they are elected they are obliged to look ahead to reelection or to a return to an active career with their clients scattered. Hence it is customary for a judge once elected to seek reelection. This forces him to undergo periodically the demands of the political machinery of the party. He must have satisfied not simply the litigants before his court and the bar but the party managers as well, and even after his nomination he has to run the risk of defeat at election because his party upholds some political issue totally unconnected with his service on the bench. Both theoretically and practically it would seem that tenure during good behavior is more to be desired than frequent elections.

Terms of
judges

¹ See pages 139-143.

Removal of
judges:
(1) By
election

Judges are removable by four different methods: election, "address," impeachment, and recall. Where the judge is chosen for a definite term he is subject to removal at the end of that term through the election of another candidate. Thus, election permits removal at certain definite periods.

(2) By "ad-
dress"

In many states a judge, chosen for whatever term, may be removed by the governor on the joint address or resolution of both houses of the legislature. This method is to be sharply distinguished from removal by impeachment, to be discussed later. An address or joint resolution is a political act. It is applied to judicial officers, not because they have committed crimes or misdemeanors worthy of impeachment but because their character, actions, or ability have failed to give satisfaction. In some states an address may be passed by a mere majority; in others a higher majority is required. The governor in most states is not compelled to remove the incumbent against whom the address is aimed, but he may do so. Much can be said in favor of this method of removal. Few judges are corrupt and few commit offenses worthy of impeachment. More judges, however, fail to give satisfaction because of their personality or lack of ability. These judges may hold their positions as the result of executive appointment or election. Their presence on the bench for short or long terms, however, is unfortunate, and removal by address gives the executive a method of rectifying previous errors. This method of removal of judges, however, is seldom invoked.

(3) By im-
peachment

Impeachment is, in theory, a judicial process. The lower house of the legislature brings charges against a judge that he has been guilty of some crime or misdemeanor. The upper house of the legislature, acting as a court, hears the evidence against the judge (who is allowed to present evidence in his own behalf) and finally, having heard the evidence, votes to sustain or to dismiss the articles of impeachment. In theory impeachment should not be sought against a judge unless he is guilty of some serious offense. In some states, however, where removal by address is not allowed, impeachment is the only method by which a judge may be removed before his term of office expires.

The recall of judges can be applied only in those states where the judiciary is elected, and it has been adopted by only a few.¹ The method is the same as for the recall of any state officer; namely, a petition and an election.

Theoretically there is much to be said both in favor and in opposition to the recall of judges. In principle a popular recall might be the means of keeping the courts in close harmony with the people, of insuring that the administration of justice is in accord with public sentiment and that the judges are the servants, not the masters, of the people. But there are strong, equally theoretical objections to the popular recall of judges. They, more than any other officers, should be beyond the suspicion of political party or personal influence. Judges should be protected from the waves of popular discontent and should administer the laws irrespective of momentary criticism. The remedy for the enforcement of a bad law or one with which the people are not in sympathy lies not in the removal of the judge, but in the amendment of the statutes. Moreover, it can be demonstrated theoretically that election is not the best means for obtaining a satisfactory judge, and thus the recall would only accentuate the faults of the elective process. The foregoing considerations, however, are largely theoretical. The election of judges perhaps has generally produced a judiciary satisfactory to the people of the states. Although the recall of judges exists in four states, no state judge has ever been recalled. Just because the recall of judges offers opportunities for weakening the judiciary, it must not be assumed that these opportunities will be seized. Few political systems reveal in actual operation either the theoretical advantages or disadvantages which their proponents or critics find in them. Much depends upon traditional methods by which the system is worked.

A variant of the recall of judges is found in Colorado. This is the recall of judicial decisions.² In that state, when the supreme court has declared a state law unconstitutional, a stated number of voters may petition for a popular referendum

(4) By recall

Merits of
the judicial
recall

The recall
of judicial
decisions

¹ Arizona, California, Colorado, Kansas, Nevada, Oregon.

² This has been declared unconstitutional, 198 Pac. 146, 150.

upon the question of whether the law shall be enforced in spite of the decision of the court. Little can be said for this device. In the first place, it is applied not to the law in general but to the decision of the court upon a particular case, and another case might well arise in which the court would reaffirm its decision contrary to the popular verdict, holding that the cases were different. In the second place, since 1916 the Judiciary Act of the United States has been amended so that decisions of state courts against the constitutionality of state laws on the ground of their conflict with the Federal Constitution are subject to appeal to the Supreme Court of the United States. In case of a conflict between a state law and a state constitution it would seem far wiser and hardly more difficult to amend the constitution, thereby establishing a general rule, than to recall a single decision.

2. *The Clerk*

The clerk

All courts of record are provided with a clerk. He is purely a ministerial officer and issues writs and legal processes according to the statutes and is custodian of all the papers and records of the cases coming before the courts. He is thus an officer of very great importance. Generally, for the intermediate courts, he is elected by the people of the district or county. In some states the judges may appoint the clerks of their courts, particularly of the higher courts. Since he is a ministerial officer and his duties are of a highly technical and important nature involving no discretion, there would seem to exist little reason for making him an elective officer. In some states the clerk of the district or county court combines the function of the county clerk with his judicial duties.¹

3. *The Sheriff*

The sheriff

The sheriff is the executive officer of the county, and as such his duties will later be discussed.² As judicial officers the sheriff and his deputies are responsible for the maintenance of order within the court, serve the writs and summons issued by the

¹See page 329.

²See pages 327-329.

court and its clerk, and execute the sentences of the judge. In civil cases the sheriff may seize and sell property to satisfy the award of the court.

4. *The Jury*

The jury is an ancient instrument of English jurisprudence. Trial by jury is considered the basis of Anglo-Saxon justice. Not all the colonies adopted it in its English form, but the institution has finally developed so that the system is not very dissimilar to that of England. In criminal cases trial by jury involves two steps: indictment by the grand jury and trial by the petit jury.

The grand jury¹ is a body of not less than thirteen nor more than twenty-three persons selected according to statute and sworn by the court. It is the duty of the grand jury to inquire as to the commission of crimes within the territorial district for which it is chosen. In legal phraseology it makes inquest. Once summoned, the grand jury may inquire into any matter of public concern. It may summon before it any person or officer for the purpose of obtaining information. Having heard the evidence the grand jury makes a presentment; that is, it presents to the court a bill of indictment or, more briefly, an indictment charging a person or persons with certain crimes or misdemeanors. This indictment is the result of a majority vote of the grand jury, which has heard the evidence but not the defense.

The positive action of the grand jury is found in its power to investigate any person or subject and to present an indictment. The grand jury is thus an important instrument in popular self-government. The enforcement of the laws and their application is not intrusted to any one officer, but to a group of citizens of the district. Should the proper officials be negligent in enforcing the law or in the performance of their duties the grand jury may investigate their procedure and their actions. Should there be evidence before the grand jury that the police are not enforcing the laws and that crime is prevalent the grand jury may present an indictment of the criminals and of the officers.

¹See G. E. Edwards, *The Grand Jury*.

Negative
action of the
grand jury

The grand jury also serves as a means of protection against unjust or unnecessary prosecutions. No man may be put to the expense and danger of a criminal trial by a jury unless indicted by the grand jury, except in petty cases. This means that a majority of a group of his neighbors, having heard the evidence against him, thinks that it is likely that he may have committed the crime. Indictment by the grand jury is thus a great protection against the possible tyranny of the police or prosecuting officers.¹

Workings
of the
grand jury

When the grand jury is summoned by the sheriff it takes its seat in the courtroom and is sworn by the clerk of the court.² The judge then charges the grand jury as to its rights and duties, explaining very carefully that while it is in session it has full power to summon before it any person and make inquest on any subject. The judge points out that the prosecuting attorney will act with the grand jury as its adviser, but that the grand jury need not be bound by his advice nor follow his directions.³ The prosecuting attorney presents for the consideration of the grand jury the cases which have been sent up from the lower courts, either as the result of appeal or because the determination of the case was beyond the jurisdiction of the lower court. The jury hears the evidence which the police and prosecuting attorney have gathered, examines the witnesses, and then votes to indict or to dismiss the case. When

¹In some states prosecution by information is allowable. Under such procedure the prosecuting attorney may under oath initiate a prosecution. This power, however, is carefully limited by statute.

²Oath taken by the grand jury in Massachusetts: "You as Grand Jurors of this inquest for the body of this county of —, do solemnly swear that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge. The Commonwealth's counsel, your fellows, and your own, you shall keep secret; you shall present no man for envy, hatred or malice; neither shall you leave any man unpresented for love, fear, favor, affection, or hope of reward, but you shall present things truly as they come to your knowledge, according to the best of your understanding. SO HELP YOU GOD."

³Within recent years a grand jury in one state made an extended investigation upon the actions and conduct of the office of a prosecuting attorney. For this purpose the governor of the state appointed a special attorney to assist the grand jury.

it has completed its work the grand jury comes before the court and presents the results of its action in the form of indictments.¹ If it reports to the court that it has completed its work it may be dismissed, but the court has no power to dismiss a grand jury of its own initiative, and the latter may continue to make inquiry into evidence as long as it sees fit.

The petit jury, or trial jury, consists in most states of twelve men. These are chosen by lot from panels or lists of names prepared in various ways and filed with the clerk of the court. The clerk of the court draws the names of twelve jurors, who take their seats in what is known as the jury box. In criminal cases and, in some states, in civil cases both the prosecution and the defense may "challenge" a juror; that is, claim that he is unfitted to perform his function because of prejudice or some other reason. In some jurisdictions the challenging of jurors has been allowed to go to such an extent as to constitute a scandal. The indictment of the grand jury in criminal affairs, or the claims of the plaintiff in civil cases, is read to the jury. The duty of the petit jury is to determine the facts of a case. Each side may present evidence to substantiate its claims, and the jury, in secret, must weigh the evidence and determine the facts in the form of a verdict (*vere dictum*).

The petit jury

The theory of jury trial rests upon the assumption that a man is entitled to be considered innocent and to the possession of his life, liberty, and property unless twelve of his neighbors (men chosen from the vicinage) are convinced that he is guilty of some crime. The jury determines the facts; that is, the truth of the evidence against the defendant. That they are able to do this rests upon the assumption that being persons like the defendant they can understand and determine how an ordinary man would act under similar circumstances.

Theory of the petit jury

Trial by jury is often criticized. Cases may be cited where passion or sentiment has swayed the jury and verdicts have been brought in which shocked the community. Instances, moreover, are not wanting where fraud and crime have been suspected and even proved and where juries have been tampered with.

Criticism of the jury system

¹An indictment against an accused person is sometimes known as a "true bill."

In some quarters it is felt that the juries are too lenient and refuse to convict criminals about whose guilt the community seems to have little doubt. Nevertheless, on the whole, the jury system is regarded as a success. The lawyers who try cases before a jury, and even the prosecutors who attempt to convict the violators of laws, agree that it "works substantial justice."¹ But this is not the real question. Theoretically the jury should not "work substantial justice," but should decide upon the truth of the facts submitted to it. The jury is an institution for the determination of facts irrespective of the consequences which may result from their decision. The laws may be unwise; they may be contrary to public sentiment; but it is the function of the jury not to enforce the law in accordance with popular sentiment but to pass upon the truth or falsity of the evidence before it. When that is done its duty is complete. A jury should not be concerned with the making of the law, which is the function of the legislature, nor with the application of the sentence, which is the function of the judge.

Actual
working of
the jury
system

Very frequently, however, juries are not governed by these theoretical rules. They attempt to do substantial justice; that is, to bring in verdicts not only in accordance with their oaths but in accordance with the popular demand. Too often they see the facts colored by the passion, sympathy, or prejudice of the time. In so doing they violate the principles and theory of jury trial, but they give satisfaction to the community. The statute books contain many laws of which popular opinion does not approve. There are many other laws, accepted in theory, whose application is not generally desired by certain classes. It is difficult to get convictions on cases under these laws. The jurors instinctively feel that they themselves might or do violate such laws, and they frequently refuse to be confined to the simple fact of the determination of the evidence. They try to do justice. Again, the jurors frequently have in mind the penalty prescribed by law, and, usurping the functions of the judge, they refuse to convict for an offense bearing a range of severe penalties, but convict for an offense where the

¹See Arthur Train, *The Prisoner at the Bar*, chap. xi, "The Jury."

penalties are less severe. In other cases, where the jurors representing the popular opinion are generally agreed that the offense is worthy of severe punishment, they may be all too ready to see the facts in a light unfavorable to the accused; thus, in burglary and arson and robbery it is comparatively easy for a prosecutor to obtain conviction. It is far more difficult, however, to obtain a conviction for the crime of murder in the first degree, because in most states the penalty prescribed is death, and juries are loth to bring in a verdict which requires the judge to sentence the accused to death. This greatly weakens not merely the enforcement of law but the administration of justice. History shows that the certainty of conviction, rather than the severity of the penalty, is the greatest deterrent to crime.¹

In spite of these criticisms and in spite of certain flagrant instances of the miscarriage of justice, the jury system gives satisfaction. It is rightly regarded as the greatest bulwark against tyranny and injustice. Although its weakness may, perhaps, be demonstrated in the escape of certain guilty persons, society is better satisfied, on the whole, to allow these to go unpunished than to make it possible or likely that the innocent should suffer. The grand jury and the petit jury may be regarded from two points of view—as agents of the court to secure the enforcement of the laws and as agents of society to insure or protect the rights of the citizens. This last consideration will be discussed later.²

Merits of
the jury
system

5. *The Prosecuting Attorney*

The prosecuting attorney, commonwealth's attorney, state's attorney, district attorney, county attorney, or public prosecutor, as he is variously called, is a county and state officer. As such he has been mentioned in discussing the enforcement of state laws³ and will be further discussed in describing county government.⁴ The prosecuting attorney, however, is a quasi-judicial officer,

The
prosecuting
attorney

¹ Judges in some states have the power to set aside findings of juries in civil cases or convictions in criminal cases as contrary to the law and evidence, and to order a new trial.

² See pages 304-305.

³ See page 152.

⁴ See pages 326-327.

and as such is a part of the judicial system of the state. In civil affairs the county attorney may in some states conduct suits in which the county is involved, but the greater part of his duties is connected not with civil but with criminal cases. He makes a preliminary investigation of crime with the police and detectives of the state or county and prepares the cases for the grand jury. Although the grand jury may hold a general inquest concerning all matters in its district, as a matter of fact it generally confines itself to the consideration of cases prepared for it by the district attorney. It is thus of vital importance for the good order of the community that the district attorney should be an upright, able, and far-seeing officer. The district attorney meets with the grand jury and acts as its adviser. He thus assists in the framing of the indictments presented. In some states (and formerly in all states) this is a matter of vital importance, since the court procedure required an indictment in language too technical for most laymen. After the grand jury has indicted an offender the district attorney is intrusted with the prosecution of the case. It should be his function not to attempt to secure a conviction but to obtain justice. A prosecuting officer thus becomes a judicial officer in his attempt not simply to win the case but to do justice. Under certain circumstances the district attorney may, with the assent of the court, refuse to prosecute on the indictment presented by the grand jury. This power of *nolle prosequi* should be rarely used, and in any case is used only with the assent of the court. The district attorney, however, has considerable latitude as to when the case should be prosecuted and may postpone it until another session of the court, releasing the accused on bail. Cases are not unknown where an attorney has consented to successive postponings until the witnesses against the accused have become unavailable and the case has thus failed. The prosecuting attorney, moreover, is generally consulted by the governor and pardoning board if an appeal is made for executive clemency and pardon. In some states his recommendations carry great weight.

CHAPTER XV

THE PROCEDURE OF THE COURTS

I. CRIMINAL CASES

There are eight steps which are ordinarily followed in a criminal trial. The first step is the apprehension of the defendant. This is known as the arrest. Arrests may be made by anyone, either with or without a warrant. A warrant is a writ issued by a justice of the peace to an officer or private citizen commanding him to apprehend the defendant and bring him into court. An arrest may be made by a private citizen when a crime of any sort has been committed within his presence. Either a private citizen or an officer may arrest a person who has committed a felony whether in his presence or not, but it is of vital importance that a felony should have actually been committed. If not, and a private citizen attempts to arrest another, he may be prosecuted for false arrest. However, if a felony has been committed, an officer may arrest anyone whom he has reasonable ground to believe has committed it. This is the sole distinction between the right of a private citizen and of an officer to make arrests. Practically, however, an officer is employed and paid to make arrests and to detect and prevent the commission of crimes, while a private citizen is not. Nevertheless, if a crime is committed in the presence of a private citizen, the citizen must take some steps either to prevent the crime or to apprehend the criminal; otherwise he may be regarded as an accomplice. The extent to which he should act depends upon circumstances and is generally satisfied by a report to the police authorities.

Criminal cases :
(1) Arrest

Commitment is an act of a justice or court in sending the prisoner to a place where he may be detained until he is released or removed by order of the court. Since justices of the peace and courts of the lowest order have only limited

(2) Commitment and bail

jurisdiction over petty offenses, their function is to hold a preliminary hearing and to commit the accused for safe-keeping until his case may be heard before a higher court.

[Bail] All states provide that prisoners accused of a crime other than the most serious may be released upon bail pending the determination of their cases. The justice of the peace or the judge of the lowest court and in some states bail commissioners may determine the amount of security which they will require for a prisoner's appearance at the time and place of the meeting of the higher court. In some states there have been communities where this function has been abused. Accused persons have been released upon their own recognizance or the bail has been fixed at an amount which would not deter the prisoner or his security from forfeiting the bail and allowing the prisoner to escape.

(3) The accusation

Accusation may take one of two forms—either indictment by the grand jury or information by the prosecuting officer. Both of these have been described in the preceding chapter. In either case the government accuses the prisoner in open court of the offense for which he has been arrested and for which he is to be tried.

(4) The arraignment and plea

The prisoner is then arraigned (that is, he is called to the bar of the court), the indictment or information is read to him, and he is asked whether he is guilty or not guilty. If he pleads guilty there is no trial. The prisoner or his attorney may make certain pleas to the judge for clemency, and the prosecuting officer may inform the judge of the prisoner's record and the circumstances of the crime. If the plea of not guilty is made the case goes to trial.

(5) The trial:
(a) Selection of jury

The first step in a criminal trial, after the plea has been entered, is the selection of the jury. The clerk of the court draws by lot certain names from the jury panel. In some states both the prosecution and the defense have the right to examine or question the fitness of the jurors for the particular case. As a result of this examination certain jurors may be excused because they have shown bias, prejudice, or other evidences of being unfit to try the case. In all states both the prosecution and the defense are allowed a certain number of peremptory challenges. This means that they may reject a certain number

of jurors without assigning any cause. In some jurisdictions the selection of a jury, particularly for an important case, is a long and tedious process. The defense apparently seeks to obtain not jurors of average intelligence, but jurors on whose feelings or emotions it may work.

It is sometimes customary, though not always essential, for each side to give an outline of what it is going to attempt to prove. This is for the benefit of the jury in order that it may intelligently follow the testimony and the evidence presented to it. (b) Opening the case

The prosecution then presents evidence to substantiate the accusation of the indictment. This may be in the nature of "exhibits" (that is, documents, photographs, and inanimate things) or the oral testimony of witnesses. The witnesses who are called to give their evidence are subject to direct examination; that is, questioning by the prosecution in order that they may clearly present to the jury the facts to which they testify. The rules governing their evidence are highly technical, but in general a witness is allowed to testify only to those facts he has seen or knows. After the direct examination comes the cross-examination. In this the counsel for the defendant questions the witness concerning the things to which he has testified on direct examination. He may attempt to cause the witness to contradict himself and to show the jury that he is not a credible witness or not to be believed. In general, however, the cross-examination must be confined to matters testified on direct examination. The witness may be subject to a redirect examination and a re-cross-examination. (c) Production of the testimony

After all the testimony has been presented by both sides arguments are made. Both the prosecuting officer and the attorney for the defendant review the evidence which has been presented and arrange it in such a manner as may convince the jury of the guilt or innocence of the defendant. (d) The argument

The judge then charges the jury. This means that the judge explains the law to the jury or, in legal parlance, gives the jury the law. He defines the crime in its various grades and explains to the jury what elements are necessary for the conviction to any particular grade. In some states he is allowed (e) The judge's charge

some little latitude in commenting upon the evidence, but in no state is he allowed as much latitude as is granted to the judges in the English courts. Counsel on both sides generally ask for written instructions presented by them to the judge, and these the judge allows, with such changes as he thinks necessary to state the rules of law correctly.

(f) The
verdict

The jury, under the guard of a sheriff or a deputy, is conducted to a room where it examines the evidence, discusses the case, and comes to an agreement, or else is obliged to report a disagreement. What happens in the jury room varies not simply from state to state but from jury to jury within the same state. If it were possible to generalize, the following procedure might outline the usual steps taken by the jury in the process of reading a verdict. Often as soon as the jury gets to the jury room a preliminary vote is taken as to whether the defendant is guilty or not. Seldom is this preliminary vote unanimous. The evidence may then be discussed, sometimes under the direction of the foreman of the jury, and a vote then taken. If this vote is unanimous the work of the jury is done. If it is not unanimous the jury must continue to argue the evidence and to attempt to convince the minority. If this is impossible, after a period of time satisfactory to the court the judge may discharge the jury and order a new trial. If unanimity is reached the jury reports to the court and delivers the verdict by its foreman.

(g) The
sentence

If the accused is found guilty the judge may at once apply the sentence prescribed by the law or postpone sentencing the prisoner until some future date. When the prisoner is sentenced he is arraigned at the bar and his attorney may make a final plea for clemency. The judge then determines from the nature of the case and the character of the defendant what sentence the prisoner shall receive. In some cases no latitude is allowed to the judge; for example, in cases of murder of the first degree. In other cases great discretion is permitted. The prisoner may be released on the payment of a fine, or he may be confined to prison. He may be confined either on a definite sentence or on an indeterminate sentence, which shall be terminated according to the report of a special board or

commission.¹ In some cases the judge may give what is known as a suspended sentence; that is, pronounce a definite sentence but suspend its operation.

After the judge has sentenced the prisoner the clerk makes out the commitment papers and delivers them to the proper officer, who takes possession of the person of the prisoner and disposes of him according to the terms of the sentence. (h) Execution

2. CIVIL CASES, COMMON-LAW PROCEDURE

The essential difference between a criminal case and a civil case is that in the first the state prosecutes and the guilty person is punished, while in the second a private individual seeks to maintain his rights and, if successful, is awarded damages. Stripped of technicalities and without attempting to cover all kinds of civil action the procedure in civil suits includes the following steps: Civil cases:

The *præcipe* is the filing of a request that a writ be issued under the authority of the court. This writ—and there are many kinds—is directed to the sheriff of the county where the court has jurisdiction and instructs him to summon the defendant to appear in court to defend his action. (1) The *præcipe* and original writ

The defendant, either in person or by his attorney, appears in court. In case he does not immediately offer satisfaction or neglects the summons of the writ, judgment against him may be given in his absence. (2) Appearance

The pleadings were originally oral altercations in open court before the judge as moderator. In most cases today the pleadings are conducted in writing and presented to the court. The whole object of the various pleas is to present a single issue. The pleadings begin with the declaration of the plaintiff, which is a formal statement of the facts upon which he bases his claim. Two courses are open to the defendant: he may deny the facts stated in the declaration (this is a plea) or he may claim that even if the facts as stated are true they constitute no ground for recovery. The plea may be of two sorts: either a traverse (that is, a denial of the truth of the facts) or a plea of (3) The pleadings

¹See page 181.

confession and avoidance (that is, an admission of the truth of the facts, but a submission of new facts to justify or alter the original claim set up by the plaintiff). The defendant, however, has another course open to him which is known as a demurrer. By this the defendant admits the truth of the facts, but claims that the law does not allow the remedy asked for. A plea presents a question of fact, a demurrer a question of law. After the defendant has filed his answer the plaintiff may traverse or plead to the facts submitted by the defendant, or he may demur. This process may continue until a single issue has been reached. In states where the old common law prevails, unchanged by statute, these pleas may continue almost indefinitely. In most states, however, there is a limit fixed by statute. Often the steps are limited to two—the plaintiff's complaint and the defendant's answer. Whenever this stage is reached the case is ready for trial.

(4) The trial

The trial of a civil case before a jury is quite similar to the steps described in the previous section on criminal cases, with certain important differences. Many civil cases involve the ascertaining of damages. In fact, a civil suit ordinarily results in an award of damages. These the jury must determine. If the plaintiff has obviously failed to make out his case, the judge may take the case from the jury; that is, dismiss the complaint. Sometimes, however, all the evidence presented tends to only one conclusion, and the judge may direct the jury to bring in a verdict for one party or the other. All that remains for the jury to do in this instance is to determine the amount of damages.

(5) Verdict and judgment

In arriving at their verdict¹ juries pursue the same formality in civil cases which has been described in criminal cases. The verdict is then presented to the court. It is not a sentence, but a determination of the rights of parties and an award of damages. In order to obtain satisfaction the plaintiff may be obliged to take one more step.

(6) Execution

If the defendant does not voluntarily comply with the award,—that is, pay the money damages decreed by the jury,—the plaintiff or his attorney must request the court to issue a writ

¹Some states allow majority verdicts in civil cases.

of execution. This is a writ directed to the sheriff or some deputy, commanding him to levy upon and sell enough of the property of the defendant to satisfy the awards. If the defendant be a man without property, or if he has succeeded in concealing or transporting his property to another jurisdiction, execution may be impossible or it may require the filing of the judgment in the jurisdiction where the property is found.

By the agreement of both parties a civil case may be tried before a judge without the assistance of the jury. In this case the procedure is much the same except that the judge hears and determines all questions, both of law and of fact. In some cases which are exceedingly complicated and technical the judge may appoint, on the agreement of both parties, a master or referee who hears the testimony and evidence and makes a preliminary finding, which he files with the judge. The judge then goes over the record and testimony and makes his final decision.

Trial of a civil case without jury

3. EQUITY PROCEDURE

There are five steps ordinarily necessary in equity. Procedure in equity starts with a bill of complaint in which the plaintiff calls the attention of the court to certain facts and prays the court to summon the defendant or respondent to a hearing and to grant relief.

Equity procedure:
(1) Bill of complaint

A subpoena is a writ directed to the defendant, requiring him to appear at a certain time upon the penalty of having the case decided in his absence as if he had confessed the truth of the complaint. Appearance is the appearance of the respondent either in person or by attorney.

(2) Subpoena and appearance

Pleadings in equity are much less formal than those in law. The respondent may file a disclaimer (that is, deny that he has any interest in the matter) or he may demur. He may select some particular fact upon which he wishes to have the case determined. In such instance he files a plea. He may make a general denial, which is known as an answer.

(3) Pleadings

A case in equity is not heard before a jury, but before the judge alone, and the trial is known as a hearing. The judge, however, may summon a jury and submit such questions of

(4) Hearing

fact to it as he sees fit. This is known as an "issue out of chancery" and is really the use of the common-law court by the court of equity for this special finding of fact.

(5) A decree
and its
enforcement

As has been shown, a judgment in law is a mere statement of the rights of the parties. A decree in equity goes further and directs a party to perform or to cease from performing some specific act in order that justice may be done. The execution of a judgment in law depends upon the property of the defendant. In equity the defendant is guilty of contempt of court and may be punished for such if he neglects to obey the decree, but not if he merely fails from financial inability to pay a money decree.¹

4. APPEALS

Appellate
courts

The right of appeal is more common and much more widely used in the United States than in England. Appeals may be taken from any court of first instance, sitting without a jury, on questions either of law or of fact. In like manner, appeals both on questions of law and fact may be taken from some of the county courts to courts of higher jurisdiction. It thus happens that some courts sit both as courts of first instance and as appellate courts. The term "appellate court," however, is generally understood in a more restricted sense. It is used to describe those courts which pass upon questions of law that have arisen in a decision of a case in other courts.

Powers of
appeal on
a writ
of error
because of
faulty de-
cisions of
lower court

A case may be carried to an appellate court upon a writ of error. This alleges that the judge of the lower court has decided some points contrary to law. During almost any trial the attorneys are constantly making objections to the procedure, and the judge is forced to rule upon these objections. In case his ruling is questioned by one side, it notes an exception; that is, it gives notice that it will reserve the right to appeal the case on the ground that the judge has erred and wrongfully

¹The machinery of a court of equity is better fitted than that of a common-law court to handle such complicated matters as winding up partnership affairs and distributing the assets, settling large estates, and clearing up other involved accounts and business relations. Executors and other trustees often bring chancery suits to aid them in administering their trusteeships.

decided the point to which it objected. These exceptions may be taken at almost any stage of the trial—from the indictment to the judge's charge in criminal cases—and to any ruling the judge may have made in civil cases. When the case is brought to the appellate court on a writ of error it is the duty of the court to decide the point of law. If the original ruling is upheld, the judgment of the lower court is affirmed; otherwise the case may be sent back for retrial. In some cases, however, where the point of law is fundamental and the error of great importance, the appellate court may dismiss the case or may direct the lower court to enter judgment according to the decision in the appellate court.

Another ground of appeal may be that the verdict is contrary to the weight of evidence. In cases of this sort the entire record of the trial in the lower court, including the stenographic reports of the evidence taken for the purpose,¹ is transferred to the upper court, and the evidence is there carefully reviewed by the judges. If the judges are convinced from a careful examination that the verdict is contrary to the evidence presented, they may send back the case for retrial or even dismiss it, or order the appropriate judgments to be entered. Another ground of appeal is put forward because of the discovery of new evidence. The appellate court, however, must be convinced that the newly discovered evidence is vital to the case and that it might have altered the verdict originally given.

Other
grounds of
appeal

When an appellate court remands a case for retrial, both parties are obliged to go to the expense and discomfort of prosecuting and defending the case anew, and the party losing may once again appeal the case with the possibility that a

Effects of
appeals

¹All evidence in equity suits except in issues out of chancery, which are tried by common-law methods, must be reduced to writing, and forms a part of the official record of the case. In common-law actions the evidence is oral and not usually officially recorded. Either party takes stenographic reports at his own expense and uses them on appeals involving questions of fact. Affidavits (that is, sworn statements made without opportunity for the opponent to cross-examine) are not admissible as evidence, but depositions (that is, testimony taken out of court with opportunity for cross-examination and in conformity with certain other requirements) are admissible even in common-law trials. Practically all testimony in equity suits consists of depositions.

second retrial may be required. This process may go on almost indefinitely. Several disadvantages result from this practice. It favors the wealthy suitor who has money and can procure counsel to prosecute appeals at the expense of the poorer. Thus it is undemocratic. It greatly adds to the law's delay: that is, appeals delay the final administration of justice. Every citizen has the right to be heard before judgment, and all controversies involving more than a certain small amount (fixed in each state, but usually about twenty dollars) must be decided by a jury if either party demands it. These invaluable rights involve an expenditure of time, but few would be willing to sacrifice these rights in order to expedite the decision of a case. It is obviously proper that appeals should be allowed and that errors should be corrected in order that justice may be done. No one should criticize the delay which results from the appeal of a case on an important point of law so that a vital error might be corrected or that new and important evidence might be introduced. But appeals are often prosecuted on unimportant grounds, and some appellate courts remand a case for retrial where the error alleged is an unimportant one and not vital to the determination of the case. Similar unimportant errors in the retrial of the case may offer the opportunity for another appeal and the possibility for another retrial. Thus, Governor Baldwin cites the case of a brakeman injured on a New York railroad in 1882.¹ In 1884, as a result of a suit against the company, he recovered damages to the amount of \$4000. In 1886 this judgment was reversed on appeal. On a new trial he got a verdict for \$4900. This was appealed to two courts successively—the first court affirmed that judgment, while the second reversed it. In 1889 the company won the third trial. The brakeman then made two appeals. In 1894 the intermediate appellate court decided against him. The court of last resort in 1897 decided for him. At a fourth trial the brakeman obtained a verdict for \$4500. The company then appealed with success. A fifth trial gave the brakeman a verdict of \$4900, but this was set aside on appeal.

¹S. E. Baldwin, *The American Judiciary*, chap. xxiv, "The Law's Delays," pp. 366-367.

A sixth trial followed, with the same results, and the company again won the appeal. In 1902 a seventh trial took place which resulted in a verdict of \$4500. This the company appealed, but was defeated. Such an example, with seven lawsuits and seven appeals, is extraordinary in American jurisprudence, but the case is cited to show the possibilities of the appellate system.

Because of delays and retrials it has sometimes been suggested that the right of appeal be restricted. This would be extremely difficult and perhaps unfortunate. It would result in the possibility of an uncorrected error involving injustice. One suggestion which is sometimes urged is that no appeal should be prosecuted without the assent of the trial judge. This has little to recommend it. It is on account of the errors of the trial judge that the case is appealed, and it is to be doubted whether such a judge would be in an unprejudiced position to grant or withhold the right of appeal. Another suggestion, of somewhat more merit, is that no appeal should be prosecuted without the assent of one of the judges of the appellate court. This also is open to objection. The judge of the appellate court would either be obliged to make an exhaustive examination and hold hearings, which in themselves would amount to the process of appeal, or else he would be forced to grant or withhold his permission from a cursory examination and an ex-parte hearing. Neither process is satisfactory.

Suggested
reforms

5. POWER OF THE COURTS TO DECLARE STATUTES UNCONSTITUTIONAL

Appellate courts, and lower courts as well, possess what is known as the judicial veto over state legislation.¹ This is exercised by the United States Supreme Court with regard to state legislation. It is implicitly or explicitly granted to the highest state courts by the constitutions of the several states and is everywhere assumed by the appellate courts. Theoretically it is a judicial function where all that the judge does is

The judicial
veto

¹See excellent accounts by J. M. Mathews, *Cyclopedia of American Government*, Vol. III, p. 397, and A. N. Holcombe, *State Government in the United States*, pp. 355-381.

to determine whether there is a conflict of laws or, in other words, whether the state statute is in conflict with the state constitution or with some federal act, treaty, or the Federal Constitution. Practically, however, this function is largely political. The construction of a state constitution is a different process from an application of a state law. The terms of the constitution are more general and are susceptible of various interpretations depending in part upon the political bias of the judge. In the early days of the Constitution this power was rarely used and then chiefly to protect the courts against the usurpation of their powers. Since the Civil War, however, it has been used increasingly by both the federal and the state courts, not so much to protect themselves as because of defective legislation or of legislation in conflict with the due-process and equal-protection clauses of the Federal Constitution. Both of these clauses, as interpreted by the courts, prevent or forbid the passage of any law by the legislature which the courts think is unreasonable. This "rule of reason," as applied by the courts, has at various times subjected both the courts of the United States and those of the various states to severe criticism.

6. JUDICIAL CONTROL OF ADMINISTRATION

Judicial review of the powers of administrative officers

Administrative officials derive their powers partly from the constitutions of the states and partly from state statutes.¹ In reviewing the acts of administrative officers the courts of necessity must determine the authority under which the officer acts. In other words, they must determine the constitutionality of the statute. Two general limitations are enforced by the courts. The legislature may not delegate legislative powers to the administrative officers. This means that the legislature must determine by statute the principles upon which the administrative officers ought to act. For example, an act allowing a public-service commission to regulate the rates charged by the

¹F. J. Goodnow's "Principles of the Administrative Law of the United States" is the most authoritative treatment of this subject. See also A. N. Holcombe, *State Government in the United States*, pp. 381-391.

railroads would be held to be an unconstitutional delegation of legislative power. If, however, the legislature enact that the commission should prescribe just and reasonable rates, this would probably be considered a sufficient rule for the commission to follow. In like manner, the legislature may not delegate judicial power to administrative officers nor administrative power to the judiciary. These principles have been long in existence, but they have been more frequently invoked in recent years. The reason for this is to be found in the manifold activities of state administration and in the impossibility of regulating all phases of state administration by general statutes. Countless commissions are created to perform specific functions which, while not technically legislative or judicial, for practical purposes involve the use of both functions. In reviewing the decisions of these commissions the court exerts a centralizing and harmonizing power. Such review, however, places too great a burden upon the courts and one which they are hardly fitted to assume. The commissions themselves were created because the legislature felt itself unable to deal with such technical problems and desired the opinions of experts. The judges, however expert they may be in law, are not universal experts in all the fields touched by administrative regulation.

From the time of Marshall's famous decision in the case of *Marbury v. Madison* (1803) the courts have made a distinction between ministerial and discretionary acts. A ministerial act has been held to be one which leaves the administrative officer no discretion. Acts of this sort are subject to the strictest judicial control. The courts may refuse to give legal effect to such acts because they are unauthorized by either the state constitution or state statutes; or the courts may by injunction or mandamus command the administrative officer to perform or refrain from performing such an act. Discretionary acts, on the other hand, are administrative acts which may or may not be performed according to the discretion of the administrative officer. In general, the courts will not review such an act, particularly if it is a political matter, and they have held that the remedy for wrongful discretionary acts is political rather than legal. It must be admitted, however, that

Judicial control of the acts of administrative agencies
Ministerial acts

Discretionary acts

the line of distinction is not always clear, and the courts are not always absolutely consistent in enforcing this distinction. As Professor Holcombe has well said: "The habit of looking to the courts for the final determination of important administrative questions does not solve the problem. It merely shifts its location." He holds truly that the activity and much of the criticism of the state courts in the attempt to control administration arises from administrative weakness, not from excessive judicial strength. His conclusion is also significant. "The most promising plan for correcting the defects of the existing system is to increase the efficiency of the administrative branch of state governments. This can be done only by the further reform of the methods of selecting administrative officers and by the further centralization and integration of state administration."¹

7. THE COURTS AS AGENTS OF SELF-GOVERNMENT

Action of
appellate
courts

The division of the powers of government into the executive, legislative, and judicial, which has been established by the state constitutions, gives the final determination to the courts. As has been pointed out, the appellate courts control legislative action through the judicial veto when a state statute is held to conflict with the state or Federal constitution. The action of every administrative officer may be subject to judicial review within the limits just discussed. Only an amendment to the state constitution can reverse the decision of the highest court of a state.² When it is remembered that the judiciary in the majority of the states is chosen directly by the people, it can be appreciated to what limits popular control extends over state action by means of the judiciary.

Action of
juries

In another way, however, and in one more frequently invoked, the action of the courts becomes an instrument of self-government. As De Tocqueville pointed out:

The institution of the jury places the real direction of society in the hands of the governed, . . . and not in that of the government.

¹State Government in the United States, p. 391. See also the discussion of the state administrative reform, pp. 163-167.

²An exception should be noted where the recall of judicial decisions is in vogue.

Force is never more than a transient element of success, and after force comes the notion of right. . . . The true sanction of political laws is to be found in penal legislation; and if that sanction be wanting, the law will sooner or later lose its cogency. He who punishes the criminal is therefore the real master of society.¹

The practical application of this principle has been discussed in detail in this chapter. The power and significance of the action of the grand jury has been discussed. The action of the petit jury has been described and criticized. It should be remembered, however, that the criticisms of the action of the petit jury are chiefly directed against the jury as a judicial instrument in performing the specific function which was assigned to it by theory. As instruments of self-government, juries, both by their refusal either to indict an offender or to convict one already indicted, represent the action of public opinion in determining the method and application of the law. As judicial instruments they may fail, but as instruments of government they give, on the whole, great satisfaction.

¹Quoted by A. N. Holcombe, *State Government in the United States*, p. 72.

PART IV
COUNTY AND TOWN GOVERNMENT

CHAPTER XVI

THE EVOLUTION OF LOCAL GOVERNMENT IN THE UNITED STATES

Local government in the United States was a development from English institutions. At the time of the founding of the colonies these institutions of local government had considerable vitality. The political struggles of the Stuarts were largely for the purpose of getting control of the central government.¹ Local institutions were left to a large extent in the hands of the local leaders. Many of these emigrated to America and reestablished here the institutions with which they were familiar and from which was developed the modern system of local government. The two English institutions of local government which had most effect in the development of local government in the United States were the county and the parish or the town.

The English basis of local government in the United States

The English county grew out of the old Saxon shire, which originally had a considerable degree of self-government. Although the importance of the shire courts declined and the power of the royally appointed sheriffs increased, the counties retained to a large degree the administrative control of their own affairs. This was exercised largely through the justices of the peace, of whom there were from twenty to sixty for each county. These justices were usually men of good family, but not necessarily learned in the law. Their duties were various; even as early as 1603 there were nearly three hundred statutes dealing with their functions. Aside from administration the justices had judicial duties. At quarter sessions they sat as a court, having criminal jurisdiction over all but the most petty and the most serious crimes. This court, moreover, had important administrative duties in the care of the roads, bridges, county property, and in the levying of county taxes. Thus,

The English county

The English justice of the peace

¹Edward Channing, *History of the United States*, Vol. I, p. 421.

although the county had no legislative autonomy it did possess, to a large degree, the control of its own administrative and judicial affairs.

The English
parish or
town

The English parish or town was the smallest administrative unit and originally it had few civil duties, its chief functions being ecclesiastical. With the separation from the Roman Church, however, certain civil functions were given to it; chief among these was the care of the poor, for which taxes or rates were levied. The affairs of the parish were under the control of a vestry meeting, which might be attended by all landholders in the parish. This meeting elected the parish officers and appointed a committee to advise them. Not merely was the parish responsible for the support of the poor, but it was obliged to furnish its quota of armed men at the call of the crown. Taxes or rates were also levied to provide for armor and to support the soldiers sent from the parish. Thus, through the justices of the peace in the county and the vestry in the parishes, there was considerable autonomy in English local government. Gradually this was diminished by the encroachments of the central government, but in the American colonies the original powers were reproduced.

Beginnings
of local
government
in America:

At the settlement of the colonies there was no distinction between the local and the central government in any colony.¹ But as soon as immigration increased the population the area of settlement was extended, and some provision had to be made for the government of the community at a distance from the original settlement. This growth brought about the development of three types of local government.

In the Southern colonies, particularly in Virginia, the county became the most important unit in local government. The

¹See H. G. James, *Local Government in the United States*, chap. ii. J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, gives an excellent survey of the origin and development of local government in the United States. In common with others I have freely used this for the material in this chapter. W. B. Munro, *Government of the United States*, chap. xxvii, presents an excellent summary of the history of local government in the United States. For a more extended treatment see G. E. Howard, *An Introduction to the Local Constitutional History of the United States*.

officers and the machinery of administration closely resembled those of the English county. There was no general assembly of the freeholders for political purposes; those who, because of their freehold property, were qualified to vote elected delegates to the general colonial assembly, but took no part directly in the management of the affairs of the county. The administrative officers of the county included a lord lieutenant, a sheriff, and justices of the peace. The duties of the lord lieutenant and the sheriff were analogous to those of their English prototypes, while the county courts were somewhat similar to the county courts in England and were the most important and almost the sole institution of local government. They held monthly meetings at which they exercised a limited criminal jurisdiction but considerable administrative power in that they were charged with the care of the courthouse and the building of county roads and bridges, for which they levied a tax. In course of time these courts became almost self-perpetuating corporations, since the justices of the county suggested to the governor the candidates for lord lieutenant, sheriff, and their fellow justices. In theory and practice the government of the counties was undemocratic and oligarchical, but it is probable that the same men would have been chosen for office had the freeholders been given the right of election. The system of county government was developed and retained in Virginia and the Southern colonies because of the nature of the settlements. There were few towns or communities of any size. The plantations were large and scattered, and each planter on his estate assumed many of the duties which were ordinarily performed by agents of local government.

(1) The county type in the Southern colonies

There were, however, smaller units; namely, the parishes, which had few duties other than ecclesiastical and were overshadowed in local administration by the powers of the county. The parishes in Virginia were controlled by the vestry, usually consisting of twelve men who, like the justices of the peace in the county, soon became self-perpetuating. With the vestry were associated the churchwardens as their executive agents. During colonial times the Virginia parishes amounted to very little in local government, but with the concentration of population the parishes began to assume some of the functions of the town.

[The Southern parish]

(2) The New
England
town
system

In New England the other element of English local government was developed; namely, the town. The settlement of New England was in some instances brought about by the immigration of whole parishes or congregations with their ministers. The economic life and development of the colony necessitated compact settlements; the colonists were small farmers or fishermen or traders; there were no large estates or plantations. Thus, from the very first, town life was accentuated and the control of the affairs of the town was in the hands of the town meeting, which was somewhat similar to the meetings of the open vestries in England. At a town meeting all the qualified inhabitants of the town who had assembled passed by-laws, made appropriations, and elected officers. The most important officers chosen in the town meetings were the selectmen—a committee of from three to thirteen members. These officers were the executive agents of the town, although their powers were strictly circumscribed. In the first place, they were limited by the appropriations which were made by the town meeting, and they had no independent power to levy taxes. In the second place, the business was thoroughly discussed in town meeting and each project separately voted. Therefore the selectmen had little or no opportunity to undertake projects on their own account—they were executive managers with little discretion. In every town a constable was chosen, but he was merely another agent of the town meeting. A more important officer was the town clerk, who acted as secretary of the town meeting and as registrar of deeds and vital statistics.

[The New
England
counties]

Every New England colony in course of time established some form of county government. The counties, however, in New England were rather judicial districts than instruments of local government.

(3) The
mixed
system

In the middle colonies a mixed system of local government developed. In this region the towns were more important than the parishes in the South and had a considerable degree of autonomy. In New York State, after 1691, there were created elective county boards of town supervisors which consisted of

one freeholder elected from each town in each county to supervise the levy and assessment of the local taxes for county purposes. This feature was adopted in the colonies and later in the states composing this group, and is the distinctive mark of the mixed system. In the middle group the county was the political unit which elected the members of the colonial legislature, and with the development of the elective principle for county officers it became the center of political activity.

Outside of New England a third unit of local government was found; namely, the borough. In England a borough received its charter from the crown; in America it was chartered by the colonial governor as the crown's representative. The first borough to receive a charter was New York, to which Governor Dongan in 1686 issued a charter.¹ The charter prescribed the form of government, which, not unlike that of the English borough, consisted in general of an executive officer or mayor appointed by the governor, councilors elected by the freemen, and aldermen chosen by the councilors. As in the English borough, the mayor, aldermen, and councilors met in a single borough council. In New England the system of town government was so satisfactory that no town in those colonies became a borough or a city before the Revolution.²

The colonial
borough

The colonists were fairly well satisfied with their system of local government; they had as much control over their affairs as did the people in England, and in New England it was even greater. Although the English authorities occasionally objected to the creation of new counties, on the whole they interfered very little with the administration of local affairs. Consequently, after the Declaration of Independence and the formation of the state governments, few changes were made in these institutions. None were necessary in the towns of New

The
Revolution
and local
government

¹In all there were about twenty chartered boroughs in the colonies before the Revolution, the most important of which were Albany, chartered in 1686; Philadelphia, 1691; Annapolis, 1696; Norfolk, 1736; Richmond, 1742; Trenton, 1746. W. B. Munro, *The Government of American Cities*, pp. 2-3.

²Boston received its first city charter in 1822, when its population had passed the 40,000 mark and its qualified voters exceeded 7000.

England, and in the counties—both in New England and in the South—the officials continued to be appointed, as, indeed, they were in Virginia until well into the nineteenth century. In other states, however, the county officials were chosen by election—generally by the state legislature, for the idea of direct popular election did not commend itself at first.

Extension
of systems
of local
government
to the
territories

Between the Revolution and 1820, settlements were pushed out as far as the Mississippi, and states and territories were organized in this region. As Professor Fairlie points out,¹ the institutions of local government in moving westward roughly followed the parallels of latitude. Thus, in the northwest territory the New England town meetings were adopted, although they were not nearly so vigorous as in the original states. Indiana and Ohio adopted the mixed type of local government which characterized New York and Pennsylvania. Kentucky and Tennessee took over the Virginia system of county government. The institutions which were thus transplanted underwent radical changes. In all the frontier settlements the principle of popular election was emphasized and the governments were far more democratic. The doctrine of manhood suffrage placed the choice of the local officials in the hands of the whole people rather than in those of the taxpayers. Professor Fairlie sums up the situation in the middle of the nineteenth century as follows:

Thus before the Civil War the main features in the development of local institutions had been established. Throughout the country the states were divided into counties, each with a considerable number of elective offices, but with important differences in the organization of the fiscal authority. Everywhere, too, the county was subdivided into smaller districts; but these varied in importance from the New England town, through the township of the Middle West, to the election and judicial precincts in the South. The basis of the suffrage for local elections was the same as for state elections; and had been steadily extended during the half century before 1860, until the general system was one where every free white male citizen could vote.²

¹ *Local Government in Counties, Towns, and Villages*, p. 35.

² *Ibid.* pp. 47-48.

The framework of local government in the United States today is characterized by decentralization, but although the forms of local autonomy are pretty generally retained, strong centralizing tendencies are everywhere seen. State control or supervision has made great headway. This began usually with the compulsory-education laws, by which the state made contributions to the local school authorities; with this financial aid came the power of supervision. State supervision, however, is rapidly extending into other fields of local activities. The state boards of health and poor relief and charities¹ exercise considerable influence, if not absolute control, over the local authorities. State boards of assessment and accounts supervise or examine the financial affairs of the local authorities, and in some states state authorities are active in the enforcement of law. The extent to which this state supervision is exercised varies in different regions. In the South the presence of large negro populations has led the state authorities to exercise closer supervision and greater control in the interests of efficient administration of law and justice. In the North and West the county is still the main unit of local government, although state control is active. In the Northeast and, to a lesser extent, in the West the concentration of population in cities has brought about an increase of incorporated communities with varying types of city government which tends to decrease the importance and activities of the old township form.

In spite of the extension of state control, local government in the United States is more active and less under the control of the central authorities than it is in any other country. This is not altogether an unmixed benefit. In many states the rural communities, if left to their own devices, entirely unsupervised, fail to maintain the standard desired by the people of the state at large.¹ School systems may be neglected, proper measures for the preservation of health and hygiene ignored, and the community may become not only a danger to itself but a menace to the rest of the state. In the same way and to an even greater degree state supervision may be necessary

Recent developments
in local
government

In the
South

Extent
of local
autonomy in
the United
States

¹See Chapters VIII and IX.

for cities. In most instances, however, the instinct of self-preservation compels the city to take proper measures for the preservation of the health of its citizens, but in so doing it not infrequently trespasses upon the rights of other communities. An example of this is seen in the disposal of the sewage of a large city by turning it into a river which flows past other cities. More often, however, the resources of a city must be guarded against extravagant or corrupt use. Thus state supervision is exercised over the finances of a city by means of limitations upon the tax rate and debt limits, and in many states public service commissions have large power in determining the grants of franchises within the city. Finally, the political action of the cities is determined by state laws and in some cities is subject to supervision by state officers.¹ Local autonomy theoretically fosters local independence and allows each community to meet its problems its own way. Practically, as has been seen, complete independence in local government too often allows the community to neglect its duties, and its failures react upon its neighbors. As Professor Munro has well said:

The right of the individual community to do as it pleases, spend its own money as it may see fit, and be a law unto itself is surely no greater than that of the individual citizen. The limits of liberty in each case are set by the rights of others. That is the fundamental consideration to be borne in mind when dealing with the problem of local self-government.²

¹ See pages 388-390 and Chapter XXX.

² W. B. Munro, *The Government of the United States*, pp. 544-545.

CHAPTER XVII

THE COUNTY¹

GENERAL CHARACTERISTICS

Throughout the state the largest district for local administration is the county.² A county is a territorial division of the state and at the same time is a quasi-corporation for the purposes of local civil administration.³ Counties are the creations of the sovereign power within the states and may be erected without the consent of the inhabitants. Generally the constitutions of the states give the legislatures the power to create counties, but in absence of this permission the legislature may

Definition of
a county

¹Chapters XVII and XVIII do not attempt to give a full and exhaustive treatment of all the problems of county and town organization or to discuss in detail all the functions they perform. Many of the problems of county government are common to both the states and counties and have already been fully treated. Many of the functions of the county are state functions, administered by officials chosen within the county; for example, the administration of justice, which is treated at length in Chapters XIII, XIV, and XV. Administrative duties and functions of towns, like the school system and water supply and so forth, are further studied in connection with municipal government in Chapters XXVII-XXX. What has been attempted in this section is to give a brief treatment of some of the varieties of county and town organization and to describe some of the features wherein counties and towns differ from states and cities. More extended treatments of county and town government are to be found in J. A. Fairlie's "Local Government in Counties, Towns, and Villages," and H. G. James's "Local Government in the United States."

²In Louisiana the similar districts are known as parishes.

³J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, gives a comprehensive treatment of this subject. A more recent suggestive discussion is found in H. G. James, *Local Government in the United States*, chaps. iii, iv. The *Annals of the American Academy of Political and Social Science*, Vol. XLVII, pp. 3-278, contains a series of papers on "Types of County Government," "Typical Problems in County Government," and "Plans for the Reorganization of County Government."

act without an express grant. In some states—for example, the North Atlantic states—the power of the legislature for this purpose is hardly limited by the state constitutions, but in most states restrictions are imposed upon the exercise of this authority.

Territorial
character-
istics

The area of the counties in the different states shows great variation. The smallest county¹ is Bristol, Rhode Island, covering 24 square miles; at the other extreme San Bernardino County, California, covers more than 20,000 square miles. The average area would be somewhat over 1000 square miles, but the most usual areas are between 400 and 650 square miles. In some states the constitution prescribes a limit for the area of the county, the most usual figures set being 400 square miles.

Population

The counties vary extremely in population. The most populous is New York County, New York, with a population of more than 2,000,000; at the other extreme, Cochran County, Texas, has only 65 inhabitants. The average population is more than 30,000, and the medium population about 20,000. There are, moreover, important variations with respect to population in the different sections of the country. In Massachusetts eight of the fourteen counties have a population of more than 100,000 each, and in the North Atlantic group of states about half the counties are over 50,000. In the Southern states the majority of the counties have a population of from 5000 to 20,000, while in the Western states about two thirds of the counties have less than 10,000 inhabitants.

Character
of counties

The vast majority of the counties are exclusively rural in character. Even in most counties which contain cities the rural population predominates. In a few counties, however, a single city contains the bulk of the population,² and in some instances the boundaries of the city and county are the same.³

Counties as
corporations

Counties in the United States are known as quasi-corporations, but have less power than municipal corporations. A county may sue and be sued in the courts on contracts, but in

¹Excluding the cities in Virginia which have county organization.

²For example, Buffalo, Chicago, Cincinnati, Cleveland, and New York.

³For example, Baltimore, Boston, Denver, New Orleans, Philadelphia, San Francisco, St. Louis, and eighteen cities of Virginia.

general it is not liable for damages due to negligence. The counties may make contracts to accomplish the purposes for which they were authorized, but in most states their power to contract indebtedness is limited by the provisions of the state constitutions. In general, the corporate powers of the county are secondary and incidental to its governmental functions.¹ Thus the courts have said that the counties "exist only for the purpose of the general political government of the state. They are the agents and instrumentalities the state uses to perform its functions. All the powers with which they are entrusted are the powers of the state, and the duties imposed upon them are the duties of the state."²

While the powers and functions of the counties vary greatly throughout the United States, it is possible to find certain common factors in county government throughout the country.³ The counties are everywhere primarily districts for the administration of justice, and civil and criminal courts are held at frequent intervals. In some states, as will be seen, the judges are chosen from large districts, but the administrative officers of the courts are generally county officers. As a part of the administration of justice, the county provides and maintains courthouses and jails. In some states the county is to some extent a police and militia district, and in almost all the states the county is the district for probate administration and the recording of land titles.

County
powers and
functions:
(1) Admin-
istration of
justice

Counties have considerable importance in the administration of finance. In most states the county boards levy taxes for their own purposes and spend these taxes. Only in commission-governed cities is a similar fusion of the appropriating and spending power found. As a rule, the county not only collects its own taxes but may act as an agent of the collection of state revenues and sometimes for counties and other districts.

(2) Admin-
istration of
finance

¹For a more extended treatment see H. G. James, *Local Government in the United States*, pp. 186-194.

²J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, p. 65, quoting *Madden v. Lancaster County*, 65 Fed. Rep. 188, 191; 12 C. C. A. 566.

³See H. G. James, *Local Government in the United States*, chap. iv.

**(3) Other
functions**

In the majority of the states the county is the unit of poor relief, and outside of New England it is the county government that constructs and maintains county roads and bridges and sometimes other public works. In some states counties maintain hospitals and sanitariums and, more rarely, support charities.

**Political
importance**

The counties are important districts for election purposes in all states. In the choice of state officers the county is always the unit for canvassing the votes and generally it is the district for electing members of the state legislature. Most county officers, moreover, are elected. With these important functions to perform, it is not surprising that in most states the county is the unit of the party organization, and the county committees of the parties outside of the New England states rank next in importance to the state committees.

**The county
seat**

In every county a town or city is designated as the county seat. Here are located the courthouse, the jail, and the offices of the county officers, while either in the town or close by are generally grouped the other county institutions. Usually, when the county contains a town of fair size this town will be designated as the county seat, but there are cases where a smaller community nearer the territorial center of the county is chosen as the county seat instead of a larger city. The location of the county seat is a matter of considerable importance; in rural communities the concentration of county business in any town generally makes that town the most prominent community in the county. Since the county seat contains the county court, at which all probate business must be transacted, it is of great consequence that this center should be easily accessible. Because of the importance of the county seat, different communities vie with each other to be so designated. In general the legislature determines this question, but in the West it is sometimes decided by a referendum vote. There are counties in some states which have more than one county seat, and in New England courts are not infrequently held in two or more places in most of the counties.

THE GOVERNMENT OF THE COUNTY

1. *The County Board*

In every state except Rhode Island there exists in each county, for the execution of certain governmental functions, a local authority often although not invariably called the county board.¹ It is generally spoken of as the legislative branch of the county government, but, as will be seen, its legislative functions are rather closely restricted, and it performs wide and various administrative duties and in some cases is charged with judicial functions. In general, there are two types of county boards: the first consists of a small board of commissioners elected at large by each county; in the second the county board is much larger and is composed of supervisors chosen by the townships and cities within the counties. In some states either one or the other of these types exists in its simple form; in others there are compromises between the two types, not infrequently including new and unusual features.

Types of
organiza-
tion:

The small county commission of from three to five members is found in New England and in all but five of the Middle Atlantic and North Central states, as well as in the mountain and Pacific states. These small county boards meet frequently and are active administrative bodies; they also have the power to levy taxes,² and exercise both executive and legislative functions.

(1) The
commis-
sioner type

The board type of county government is found in Michigan, New Jersey, New York, Wisconsin, and in most of the Illinois counties. County boards of this kind differ from the county commissioners in more respects than in mere size. They are composed of from fifteen to twenty-five members, but in some counties containing a large city the number of commissioners

(2) The
board type

¹See J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, pp. 75-94, and H. G. James, *Local Government in the United States*, pp. 130-139.

²In Connecticut and New Hampshire the county commissioners do not have these powers, which are intrusted to biennial conventions of the members of the state legislatures from each county. In Massachusetts the county appropriations and levies are made by the legislature, but the estimates of the county commissioners are generally adopted.

may be as large as fifty. Instead of being elected at large by the electorate of the entire county, they are chosen to represent local districts as such and are rarely apportioned according to population. Thus, as a rule, each town, whether large or small, has one representative. Larger cities, however, are sometimes given additional representation, though rarely equal to their population. Exceptions are not infrequent; thus, Detroit has more than a majority of the board of supervisors of Wayne County, Michigan, and Chicago has ten of the fifteen county commissioners of Cook County. For legislative purposes and for levying taxes and making appropriations these boards may possibly be more representative than the smaller bodies of commissioners, because they feel their responsibility to their local community. But since a greater part of the functions of the county board is executive rather than legislative, it may be doubted whether these larger boards are more efficient agents for the general purposes of county government than are smaller bodies of commissioners.

County organization
in the
Southern
states

There is no uniform organization for county boards in the Southern states. In Kentucky, Tennessee, and Arkansas the quarterly court of the justices of the peace constitutes the administrative and fiscal authority of the county; in Virginia the counties are divided into districts, each of which elects a member to the county board; in the other Southern states the county board is a small body of from three to five members. Professor Fairlie¹ has noted two characteristics in some of the states in the South. The first is the combination of judicial and administrative functions as found in Alabama, Kentucky, Georgia, and Tennessee. The second feature is a tendency toward a definite county officer, who is generally the county or probate judge, the leading member, the chairman, and often the executive of the county court. This system reaches its maximum development in Georgia.

¹Local Government in Counties, Towns, and Villages, p. 82.

2. *Powers of the County Board*

The powers and duties of county boards are strictly determined by statute. These statutes are both of general and of particular application and are constantly being amended and increased in number. It is therefore impossible to make a comprehensive classification of all the powers and functions of the county boards. But in general they manage (1) the county finances and property, (2) highways and public works, and (3) care of the poor; they have (4) some limited ordinance and police power, (5) some supervision over county officers, and (6) in some cases oversight over the minor divisions of the county.

The management of the county finances is the most important function of the county board.¹ The board levies the taxes on general property for county purposes and also the taxes for the county's share of the state tax. This power may be limited by both constitutional and statutory provisions. In general, a tax may be levied only for authorized purposes, and very frequently it may not exceed a certain maximum rate, which, however, may sometimes be exceeded as the result of a referendum vote. In some states the county board receives revenue from licenses for certain trades and occupations. Before the adoption of the Eighteenth Amendment, licenses for the sale of liquor constituted the largest source of revenue under this head. Generally speaking, county boards may not raise money by issuing bonds, but in some states they may do this as the result of a popular referendum, and in all states special authority may be granted by the legislature to make loans for specific purposes. In some states the county authorities act as boards of equalization in apportioning taxes among the various subdivisions of the county. With the power to levy taxes usually is included the power to appropriate revenue for particular purposes. This is restricted by state statutes, which, as a rule, fix the compensation of certain officers and require

County
finance

¹See J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, pp. 86-89. H. G. James, *Local Government in the United States*, pp. 232-251, gives a more extended discussion of the subject.

certain other payments. The largest items in county expenditures are for courts, roads, bridges, and poor relief.

County
works

The control of the county board over county work varies greatly in different states. Almost without exception the county board has the power to locate the important highways and build the principal bridges. In some states it has direct supervision over the construction of certain roads, although this function is being assumed in some states by a state highway commission and in others by the local authorities.

Poor relief

Outside of New England, New Jersey, and Pennsylvania, poor relief is an important object of county expenditure. In most of the states there are county almshouses, which are maintained and supervised by the county boards. In Cook County, Illinois, for example, there are various special institutions established and maintained by the county authorities. With the advance in the administration of charity, however, state institutions for paupers, insane persons, and defectives are gradually superseding the old county poorhouse.

Police
power

Throughout the United States, except in New England, the county boards exercise limited police power. Before the adoption of the Eighteenth Amendment the county boards commonly issued licenses for the liquor traffic, and in the Southern and Western states they now regulate inns, taverns, auctioneers, and other kinds of business requiring a license. Sometimes the board may offer bounties for the destruction of wild animals or noxious weeds. But as a general rule the county boards have little legislative power, this being usually exercised by means of special acts of the legislature.

Control over
county
officers

The county boards appoint only a few officers for the county and have little control over those chosen by popular election. The boards may be called upon to approve the bonds which are required from some elective officers and to examine their accounts. In a few states they are allowed to fix salaries, and in a few others to hold hearings and remove county officials for cause, but for the most part their power of control is very slight.

Political
powers

Since the county is a political unit, the county boards, outside of New England, have important powers and duties in

elections. In the Southern and Western states they establish polling places and provide ballots. The county boards also act as boards of canvassers and declare the results of elections.

3. *Administration of Justice*

The judges in thirteen widely separated states are selected by the state authorities. In all the New England states, except Rhode Island and Vermont, and in Delaware, Florida, Mississippi, and New Jersey the governor makes nominations subject to the approval of his council, the senate, or, in Connecticut, the legislature. The legislature elects the judges in Georgia, Rhode Island, South Carolina, Vermont, and Virginia, while in the other states they are chosen by popular vote for varying terms.¹ As a rule the judges for courts of general jurisdiction are chosen for a district which may include one or more counties. East of the Mississippi River these are called circuit judges, while farther west the term "district judges" is used. In general, the circuits or districts constitute the smallest area for judges exercising general jurisdiction. An exception should be noted in the case of large cities, where are established special municipal courts with definitely enumerated jurisdiction. Although judges are elected by districts and usually hold court within the district, the judges of the circuit or district courts are considered state officers and may exercise jurisdiction in any part of the state. Thus it happens not infrequently that judges from country districts, where there is less business before the court, are transferred to those districts with crowded calendars.

Centraliza-
tion selec-
tion of
judges

About one third of the states have county courts, which sit side by side with the courts of general jurisdiction just mentioned. They are found all over the United States and are not confined to any particular group of states or aggregates of population. The jurisdiction of the county courts varies greatly: in California and Pennsylvania they exercise general jurisdiction; in New York they are limited in civil jurisdiction to cases not involving more than two thousand dollars, and

County
courts

¹See pages 278-281.

they may not try cases of murder; in Illinois they have original jurisdiction in tax-assessment and inheritance cases and appellate jurisdiction from the justices of the peace.¹

Nonjudicial
functions
of the
county
courts

The county courts in some states are primarily nonjudicial bodies. For example, in Arkansas, Georgia, and Oregon the court has no civil or criminal jurisdiction, but does exercise probate jurisdiction. In Kentucky and Tennessee it carries on both administrative and judicial functions, while in Missouri and West Virginia the county court has no judicial functions whatever and is purely an administrative body.

Probate
adminis-
tration

Probate administration, or the hearing and determination of questions arising in matters concerned with proving wills or the administration of estates, is more widely decentralized than the administration of justice. In practically all the states the administration of probate is a county matter. Where the county courts are regularly established they are given probate administration, and in some cases it is their only function; in most of the other states special probate courts are established, sometimes for districts smaller than that of a county, and special probate judges are generally elected by popular vote, although the other judges may be chosen by a different method. In Massachusetts, however, the probate judges, like all the other judges, are appointed by the governor with the consent of his council.

Prosecuting
attorneys

The prosecuting attorney is an important officer in the administration of justice.² He conducts all criminal prosecutions and may represent the county in civil suits. In most states he is an officer of the county and is elected by popular vote, but in some he is chosen by districts larger than any one county. The functions and duties of the prosecuting attorney,

¹The administration of justice is well treated in both J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, pp. 95-118, and H. G. James, *Local Government in the United States*, pp. 134-160, 197-200; see also pages 269-277.

²See page 280, also H. G. James, *Local Government in the United States*, pp. 144-151, and H. S. Gans, "The Public Prosecutor: his Powers, Temptations and Limitations," in *Annals of the American Academy of Political and Social Science*, Vol. XLVII, pp. 120-124.

together with his importance as a judicial officer, have been discussed in a previous chapter.¹

Every county has a sheriff; he is the officer who represents The sheriff: the executive power of the state within the county.² The sheriff is responsible for the preservation of the peace and is the chief executive agent of the courts of the county. Every sheriff is assisted by a varying number of deputy sheriffs, who are appointed by him and act under his control. They may not perform discretionary acts, but may undertake any ministerial act which the sheriff may perform, and he, as a general rule, is responsible for their errors and mistakes.

In all the states the sheriff is a popularly elected county officer, serving for varying lengths of term. At common law (1) Selection and compensation no compensation was allowed to the sheriff, but by statute he was permitted to charge certain fees for his services. Under the fee system the sheriff's compensation became enormous in some counties—in New York County it was said to be \$50,000 at one time, and in some counties in Ohio nearly \$40,000. Even where the fee system has been abolished and a fixed salary established, the sheriff is the best-paid county officer.

As an officer charged with the preservation of the peace, the sheriff enforces the state laws, and he is a state officer from (2) As an enforcement officer this point of view.

He may upon view, without writ or process, commit to prison all persons who break the peace or attempt to break it; he may award process of the peace and bind anyone in recognizance to keep it. He is bound, *ex officio*, to pursue and take all traitors, murderers, felons, and other misdoers and commit them to jail for safe custody. For this purpose he may command the *posse comitatus*, or power of the county; and this summons, everyone over the age of fifteen years is bound to obey.³

¹ See pages 289–290.

² See Bouvier, *Law Dictionary*, under "Sheriff"; see also J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, pp. 106–112, and H. G. James, *Local Government in the United States*, pp. 151–157.

³ *South v. Maryland*, 18 How. 396, 402. Quoted by J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, p. 109.

[Importance
as a state
enforcement
officer]

This power is of importance in times of threatened riot or serious disturbance, particularly in cases of strikes. In general it rests with the sheriff to decide what measures he shall take to suppress the disorder: he may attempt to control it by his deputies, or he may summon a *posse comitatus*, or call upon the governor for state troops; in extreme cases he may, through the governor, ask the aid of the national troops. During ordinary times the functions of the sheriff as a peace officer are less appreciated. There are no organized county police, and the sheriff does not have control of the police force in the cities or the constables in the towns. He thus has very little actual power to enforce the laws of the states. Nevertheless much depends upon the character of the sheriff for the maintenance of law and order, especially in rural communities. Failure to enforce certain statutes and the all too frequent outbreaks and lynchings show the necessity of some well-organized state or county police.

(3) As an
agent of
the state

As has been said, the sheriff is an agent of the state.¹ In this capacity he is primarily responsible in theory to the executive department of the state government and in particular to the governor. Although the sheriff occupies such a position the governor in most states has very little power of supervision and direction, but in a few states² he is given power to remove sheriffs for cause, and this has been done in some cases. This situation is only another example of the weakness of the decentralized and disintegrated executive departments which characterizes most of the states.

(4) As an
agent of
the court

The greater part of the sheriff's work is as executive agent of the courts. At each session the sheriff is present, either in person or through his deputy, for the maintenance of order in the courtroom. Furthermore, he carries into execution the various orders which the court has made in the disposition of the cases. He thus serves all writs and orders, summonses and subpoenas, warrants of arrest and attachments. In addition, he executes the final judgment or decree of the court. This involves, in civil cases, collecting the award, and may include the seizure and sale of property in order to satisfy the judgment.

¹ See page 169.

² Michigan, New York, and Wisconsin.

In criminal cases the sheriff as keeper of the county jail has custody of the prisoners confined there and guards and delivers prisoners sentenced to other institutions. Furthermore, in the majority of states he is charged with the execution of criminals sentenced to death.

The coroner is the oldest of all elective county officers. It is his duty to hold an inquest in cases where it seems probable that death resulted from violence or unlawful means. The usual practice is for the coroner to summon a jury, ordinarily of six persons, who, from the evidence presented to them and the more or less expert testimony of the physician, bring in a verdict and make accusations. Anyone accused by the verdict, if not already in custody, is liable to arrest on warrant issued by the coroner. The duties demanded of the coroner involve technical knowledge of two sorts: he needs to be both a lawyer and a physician, able to make a correct diagnosis, weigh evidence, and preside over his jury. A man of these abilities is seldom chosen, and coroners' inquests have traditionally been subjects of derision. Massachusetts, in 1877, adopted the system of medical examiners, who report the cause of death, and if there is evidence of crime further action is taken by the regular prosecuting officer.

In less than half the states the office of county clerk has been established. Elsewhere the recording officer of the county is known as the clerk of the courts. As such, the clerk opens and adjourns each session of the court, prepares the docket of cases for trial, files all papers connected with each case, issues writs, enters the judgment of the courts, and keeps the minutes of the proceedings. The duties are almost entirely ministerial. In connection with the county board the clerk of courts serves as secretary and keeps the records of its proceedings and in some cases acts as county auditor. In Minnesota, however, the county auditor acts as clerk of the county board, and the clerk of courts is simply an officer of the court. Almost universally the county clerks and court clerks are elective officers, although in Connecticut, New Hampshire, and Vermont they are appointed by the judges and hold office during pleasure of the appointing power.

4. *Other County Officers*

Finance
officers :
(1) County
assessors

In most of the Southern and in practically all the Western states the value of property for taxation is determined by county assessors.¹ Their main duties are to prepare lists of persons subject to taxation, with a description and valuation of their property. Taxpayers in some states are required to submit itemized lists of their property, but such lists do not necessarily limit the valuations made by the assessors. In fixing these values the assessors act in a judicial capacity, but appeals to the courts may be made in case of arbitrary or grossly unequal valuations. Outside the group of states just mentioned assessments are made by the township officers, but as a rule there is a county officer or board which acts as an equalizing authority.

(2) The
county
treasurer

Every state except Rhode Island provides for a county treasurer, who is usually elected.² This officer receives the state and county taxes and has custody of the county funds, which they disperse according to county warrants. In some states there is a special officer who acts as tax collector; elsewhere this is the duty of the treasurer. The treasurer's term of office is usually two years, and not infrequently the same person is prohibited from serving more than four years in succession in order to insure an exact examination of the county funds. County treasurers formerly considered it their private prerogative to receive all interest which banks allowed them on the deposit of county money, the theory of this being that the county treasurer was personally responsible for all the county funds. In rich counties this amounted to a large sum; thus, in 1904 the treasurer of Cook County, who had agreed to turn over to the county all such interest, paid in \$500,000.³ Many

¹ In North Carolina and South Carolina and in Tennessee there are township or district assessors; in California the valuation of property for city taxes is made by city officers. On the other hand, county assessment is the rule in Illinois and Nebraska, and in South Dakota counties without townships.

² In Connecticut, Kentucky, Louisiana, New Jersey, and Vermont they are appointed by county boards; in South Carolina by the governor.

³ J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, pp. 123-124.

states at present require the county treasurer to return to the county all interest received on the deposit of public funds, and pay him a fixed salary and the expenses of his office.

In less than one half of the states county auditors are prescribed by statute. Indeed, such officers are most necessary with the increasing importance of the financial operations of the county. Where auditors exist they are paid sometimes on the per-diem basis or by fees, and sometimes by fixed salaries—under the fee system the auditor of Cuyahoga County, Ohio, received \$50,000 in 1903.¹ Where auditors are not established by statute the county board itself audits the accounts of the treasurer. In some counties in Michigan there are boards of auditors which practically determine the appropriations as well as audit the claims.

Titles to real estate and all documents affecting such titles are matters of record in all states. Moreover, these records are kept by county officers and, in about half of the states, by an elective officer known as the registrar of deeds. This officer is required to keep in bound volumes all deeds, mortgages, and documents affecting the titles to real estate, together with a description of the estate. From these volumes, and only by means of such records, can the titles to real estate be secured. In order to make sure that the title to a piece of real estate is good, the title must be traced through each succeeding sale and transfer, and examination must be made of all mortgages and claims that have at any time been recorded against the estate. This process is extremely technical, tedious, and complicated. In order to avoid this, and to make the transfer of real estate more easy and the title more secure, some states have adopted the so-called Torrens System of land registration. By this system, after judicial hearing, a special court grants a clear title which is guaranteed by the state. From the fees charged for this service an insurance fund is accumulated which may be used to compensate faulty decrees. This system has much to commend it and has met with general approval from all but the lawyers and companies engaged in searching titles.

¹J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, p. 127.

Outside of New England all the states have county school officials with some power of educational control. In the Southern states the county school authorities very frequently have full control and management over all the schools within the county, while in the remaining states they have supervision over the officers elected by the townships and cities. This control in the South is exercised by two sets of officers—the county superintendents and the boards of education, which usually control the school property, make appropriations, and sometimes appoint the teachers. The superintendents visit the schools, act as executive agents of the board, and exercise general supervision over the courses of study and the methods of teaching. In the other states where county school officials are chosen, the county superintendents are more important than they are in the South. In general they examine the candidates for appointment as teachers and issue licenses, although this function is sometimes performed by county examiners. The superintendents visit the schools, advise the teachers, organize teachers' institutes, and sometimes consult with the local bodies. Furthermore, they sometimes act as agents of the state department of education.¹

¹For a general discussion of administration in school matters see pages 172-176.

CHAPTER XVIII

MINOR DIVISIONS OF LOCAL GOVERNMENT¹

I. THE NEW ENGLAND TOWN

The towns in New England have been defined by the United States Supreme Court as "territorial corporations, into which the state is divided by the legislature, from time to time, at its discretion, for political purposes and the convenient administration of government; they have those powers only which have been expressly conferred upon them by statute, or which are necessary for conducting municipal affairs."² Originally the New England towns were only quasi-corporations, and in some states the property of any individual inhabitant might be seized to satisfy a judgment against the town. Now, however, the corporate character of the towns is more clearly established, and in some cases they partake of the characteristics of municipal corporations. Except in the northern regions of New Hampshire and Maine the entire territory of the New England states has been divided into organized towns. These towns are irregular in size and shape and usually contain from twenty to forty square miles. In population they also exhibit great variations—the town of Brookline, Massachusetts, having nearly 40,000 inhabitants, while three quarters of the towns in New England have a population of less than 2500. Generally the larger communities have adopted the form of city government which absorbs that of the town, but Hartford and New Haven, Connecticut—cities of 100,000 and over—

Definition
and char-
acteristics

¹These are more fully treated in J. A. Fairlie's "Local Government in Counties, Towns, and Villages," pp. 141-215, which has been freely consulted in preparing this chapter, and in H. G. James's "Local Government in the United States," chap. v.

²J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, pp. 142-143, quoting Justice Gray in *Bloomfield v. Charter Oak Bank*, 121 U. S. 121, 129.

retain the separate town organization. In New England, contrary to the practice of the Western states, there is no separate village government for settlements within the town, with the result that the towns are generally larger than those in the Western states and perform wider functions.

The town
meeting

The New England towns are governed by the town meeting. This is a direct primary assembly of all the inhabitants of the town qualified to vote. Commonly town meetings are held once a year, although special meetings may be called from time to time. The assembly of a town meeting involves issuing a warrant which designates not only the time and place at which the meeting is to be held but the business to be transacted. This warrant enumerates in detail the definite items of business which are to be taken up. Sometimes, however, one of the clauses of the warrant allows the town meeting to transact any other business that may be brought before it. The warrant is drawn up by the officers of the town (the selectmen), who have considerable discretion as to what shall be placed upon the warrant. The town meeting is called to order by the town clerk or by one of the selectmen, and the first business is to choose a moderator for the meeting. It is the practice of many New England towns to choose the same person for moderator year after year, often one who is not one of the selectmen. This gives the town meeting a semblance of independence of the town officers. In many towns this independence is more than a mere pretense, for the meeting freely criticizes the town officers in their duties. The business of the town meeting falls into two classes: the first is the election of the town officers; the second—perhaps the more important, and certainly the more interesting—is the discussion and voting of the articles on the warrant. The election of officers is conducted by means of ballots and in larger towns differs little from an ordinary local election. The adoption of the articles on the warrant is a unique and interesting procedure. The town clerk reads each article in turn, and each is subject to debate and amendment by the members of the town present at the meeting. In the rural New England towns, where the population is largely native American, this

debate and discussion is interesting and educating. Not only are the policy of the selectmen and their actions during the previous year subject to minute criticism, but the future policy of the town is discussed. The participants show great native shrewdness and often considerable skill in debate. The town meeting has authority to levy taxes and to appropriate money for all the objects of town activities. These include highways, schools, poor relief, and, in varying degrees, water supply, drainage, sidewalks, lighting, and other town activities. Formerly attendance at the town meetings was large, and the plans for town activities were actually formulated there. More recently, as many of the towns have increased in population, the proportion of the voters attending the meeting has declined.¹ Frequently the affairs of the town, as well as the nominations for officers, are decided in caucuses, and the meeting itself has degenerated into a ratification assembly. Even in these cases, however, there is always opportunity for debate and criticism, and the town meetings have great educative value in self-government.

The most important officers of the town are the selectmen.² Towns usually choose three selectmen annually, although there are some instances of a larger number, and in Massachusetts the three selectmen are chosen for three years, each one retiring in rotation. The selectmen form the administrative board of the town. They differ from the boards of aldermen in cities and from the county boards in that they have no power to levy taxes nor to make ordinances. Their powers are determined by the town meeting or are conferred by statute, and they vary greatly from town to town. In general, the selectmen issue warrants for the town meeting; they lay out highways and drains, grant licenses, and have charge of town property; in some cases they act as assessors and sometimes as poor-relief and health officers. Their financial powers are slight, but they may draw warrants upon the town treasurer in accordance with the vote of the town meeting and adjust claims against the town.

Town
officers:
(1) The
selectmen

¹In some of the larger towns the town meeting is replaced by a representative body.

²In Rhode Island the town council.

(2) The
town clerk

The town clerk acts as secretary of the town meeting and has charge of the records of the town. He issues marriage licenses, registers births and deaths, and in Connecticut and Rhode Island has some of the functions of the registrar of deeds in recording deeds, mortgages, and other papers affecting the title of land. Nominally the town clerk is elected each year, but in practice he is frequently reëlected, and there are instances of clerks serving between forty and fifty years.

(3) Assessors

In some towns the selectmen act as assessors of taxes, but in the larger towns special officers are elected. Their duty is to value the property of the town and assess the taxes according to the votes of the town meeting and those prescribed for state and county purposes.

(4) The
town
treasurer

The town treasurer receives all the money collected by taxes. These, it should be remembered, include the town, county, and state taxes, which are ordinarily collected at one time by a single officer and paid by the treasurer to the county and state authorities. The treasurer also pays out money according to the warrants signed by the selectmen and keeps account of the financial condition of the town.

(5) The
school
committee

Every town elects a school committee to which women have long been eligible in most states. In the majority of the New England states the town school committee has full control over the schools—appointing the teachers and regulating the course of study. It generally acts through an executive officer known as the school superintendent, whose duties are advisory and supervisory. It is not uncommon for small adjacent towns to combine in employing the services of a superintendent. In Connecticut and Rhode Island some of the towns are divided into school districts, each of which is controlled by a school board known as trustees, which applies the taxes voted by the district for the school. This is the extreme sign of decentralized administration.

(6) The jus-
tices of the
peace

In Maine and Massachusetts the justices of the peace are appointed by the governor; in the other New England states they are elected by the towns. Their judicial functions in the former states are very slight: they may summon witnesses, hold preliminary inquiries, and commit persons for trial; they

also may take acknowledgments¹ and perform marriage ceremonies. In the other New England states the justices of the peace have limited judicial powers.

Every town has one or more constables who are peace officers and whose duty it is to arrest violators of the law. In actual practice they do not perform many police functions, and their duties are chiefly ministerial in the execution of writs and warrants. Yet sometimes they act as collectors of taxes. In many towns they serve as highway officers, although in recent years the extension of state roads has somewhat limited their functions. Most towns in New England have library trustees, park commissioners, and a large number of minor officials.

(7) Other
officers

2. TOWNSHIPS IN THE CENTRAL STATES

Throughout the central states organized townships are bodies corporate and politic. Their corporate capacity, however, is strictly limited, and they are more properly classified as quasi-corporations.² They may sue and be sued, may make contracts for the exercise of their legal powers, and may hold land. Their position is twofold: they are districts for purely local affairs and they are also agencies for state and county business. Inasmuch as in this group of states the county is a more important agency of local government than it is in New England, the township occupies a less important place. Moreover, throughout this group of states are found incorporated villages which, on the one hand, reduce the importance of the township as do the incorporated municipalities on the other. As agencies of the county and state, the townships assess and collect the taxes for them and also act as election districts. Most of the territories in this group of states are divided into organized townships which are regular in form west of Ohio and are approximately six miles square.

Definition
and char-
acteristics

There are two types of township meetings found in this region. In the Northern states, which were settled by immigrants

Township
meetings

¹The act, by one who has executed a deed, of going before some officer or court and acknowledging that it is his act and deed.

²J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, p. 167.

from New England or under New England influence, township meetings are established by statute, and primary meetings of the qualified voters are held. The attendance at these meetings varies greatly, but in general it is considerably less than that at the town meetings of New England. One reason for this may be found in the character of the business. In New York the town meeting has no taxing power, all town taxes being levied by the county board of supervisors. In other states the township meeting is given the power to levy taxes, but in Michigan the township board may levy these for ordinary purposes in case the meeting refuses or neglects so to do. The southern tier of the central states¹ has no deliberative township meetings. Elections are held at which questions may be submitted for popular approval, but there is no general assembly for debate and decision of local issues.

Township
officers

Two types of executive officers are found in this group of states. In the Dakotas, Iowa, Minnesota, Ohio, and Pennsylvania the township supervisors or trustees have a position analogous to the selectmen of New England, while in the other states there is more likely to be an executive officer with well-defined duties. In some states² he not only acts as township officer but represents the town on the county board. The duties of these officers vary much in different states: in two³ the supervisors act as town treasurers and can also prosecute in the name of the town; in Michigan they are the assessors and overseers of the poor; in Indiana the town trustee has charge of the township finances, is overseer of the poor and treasurer, trustee, and clerk of the school township, is an election officer, and also is authorized to rearrange road districts. The township boards act primarily as auditors of the accounts of the township officers and may authorize the payment of claims. In some states they have the power to issue licenses, to fill the vacancies in township offices, and (in Missouri) to levy township taxes. As a rule, where there is no single head officer of a township, the board performs the general administrative functions and usually has the power to levy taxes.

¹ Indiana, Iowa, Kansas, Missouri, Ohio, and Pennsylvania.

² Illinois, Michigan, New York, and Wisconsin. ³ Illinois and New York.

The townships in this region have substantially the same officers as the New England town, but their duties and powers are of less importance, inasmuch as throughout this region the county authorities perform or supervise more services than in New England. Among these officers should be mentioned the township clerks, assessors, treasurers, overseers of the poor, and highway overseers.

Other
officers

In this group of states justices of the peace are elected by the townships. Primarily they are county officers, but they generally perform their functions only within the town from which they are elected. Everywhere they exercise judicial power in minor cases. This, however, is strictly limited—in civil cases generally to those not involving sums greater than from one hundred to three hundred dollars; in criminal cases to petty crimes and misdemeanors. For more serious criminal offenses they may issue warrants, hold preliminary hearings, and commit the prisoners for trial or release them on bail.

The justices
of the peace

In the central states school districts are local corporations distinct from the township corporations. Generally, however, they correspond in area to the townships or may be subdivisions of them. In many of the states provision is made for school meetings of the voters of the districts, which are like the town meetings of New England. They elect the school officers, vote taxes, locate sites for schools, and decide upon questions of management. It is usual for three trustees to be chosen as district officers, who constitute the board which actually manages the schools.

School
districts

3. COUNTY DISTRICTS IN THE SOUTH AND WEST¹

In the Southern and Western states there are no quasi-corporations corresponding to the towns of New England and the townships of the central states. For the purpose of managing local affairs the counties are divided into districts which differ in two important respects from the other areas of local government just discussed. They are simply subdivisions of the

Character-
istics of
county
districts in
the South
and West

¹ See J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, chap. xi.

county for the purposes of administration, and as such have no power to levy taxes or to pass ordinances, and, with the exception of the school districts, have no corporate character. In the second place, the practice in the South and West differs from that in the North, where a single district is used for all purposes of local administration. In the former separate districts are established for different purposes, and these districts are not necessarily conterminous, although they may overlap one another.

Districts of
the South-
ern states:
(1) County
districts

Two types of districts are usually found in the Southern states. The first is for the purposes of county administration and is known by many designations, as magisterial district,¹ civil district,² township,³ election district or precinct,⁴ supervisor's district,⁵ militia district,⁶ hundred,⁷ ward,⁸ precinct.⁹ These districts are used for the election of members of the county board and in some states for the election of justices of the peace and of assessors. The justices of the peace have nearly the same jurisdiction as in the states that have already been examined, and occasionally they are also members of the county boards and the general public agents for the districts in local affairs. All the Southern states are also divided into school districts; in the states bordering on the Atlantic the district school officers are appointed by the county school authorities, but in some of the other states the districts include only a single school, and the trustees or directors are locally elected. As has been pointed out, the school districts have a corporate character. Several reasons might be advanced for the small part played by these county districts in local government. Most obviously the counties in the South have wider functions than those in New England. But it should be also remembered that the population in the South is of a more rural character and the estates are much greater. Moreover, the presence of the negro population, which is generally debarred from the privileges of taking part in government, prevents the development

(2) School
districts

¹ Kentucky, Virginia, and West Virginia.

² Tennessee.

³ Arkansas, Montana, North Carolina, and South Carolina.

⁴ Alabama, Florida, and Maryland.

⁵ Mississippi.

⁶ Georgia.

⁷ Delaware.

⁸ Louisiana.

⁹ Texas.

of the active local governments found in the North. All these factors combine to render these districts less important than the towns and townships in other states.¹

The county districts in the Western states are generally larger than the congressional townships of the Middle West and the county districts of the South. Except in Oregon the cities and villages are commonly included within the county district. As a rule, justices of the peace and constables are chosen in each district with functions similar to those described in other sections. In addition to these divisions of the county, road districts may also be formed. But more important than these are the school districts, which are established by the county boards or county superintendents of schools. Broadly speaking, there is a district for every school, although city districts naturally include more than one school. In each district there is chosen a board of trustees which employs the teachers and controls the school property. When the taxes for the support of the schools are levied by the county board of supervisors, a special district tax may be voted by the electors in each district.

The West-
ern states

4. VILLAGES AND BOROUGHES

Villages or boroughs are small, compactly built districts possessing charters of incorporation. They differ from the municipal corporation or cities chiefly in size and from the New England towns in that they usually include only those parts of a township which are compactly settled. In many states they are known as villages, but often they are called towns or incorporated towns. The method of incorporation usually requires a petition from the inhabitants of the district and a popular vote. This petition may be presented to the judge of the principal local court, or to the county board or town supervisor, according to prescription. In some states the villagers remain a part of the township,² while in others they are independent of it.

Definition

¹ See J. A. Fairlie, *Local Government in Counties, Towns, and Villages*, pp. 191-195.

² Illinois, Indiana, Iowa, Kansas, Michigan, New York, and Ohio.

³ The Dakotas, Minnesota, New Jersey, Pennsylvania, and Wisconsin.

**Functions
of the
villages**

The functions of the villages vary in different parts of the country. In New England they are relatively of little importance, as they only supplement the organized active life and duties of the town. Wherever the villages remain parts of the township their status is about the same as in New England, but where they are independent of the township the village government usually adds the duties ordinarily performed by the town. In general, the villages provide for fire protection, street pavements, sidewalks, sewers, waterworks, street lighting, and police.

**Village or-
ganization**

The principal authority in a village is the council or board of trustees. Such councils have power to pass ordinances on subjects enumerated in the statutes; they have control of the streets, and authority to issue licenses for certain occupations and to construct the necessary public works. To accomplish these purposes the village councils have limited power of taxation and generally may issue bonds for certain purposes, although the amount of these bonds and the objects for which they may be issued are regulated by statute.

**Village
officers**

The village officers are ordinarily prescribed by statute, although the village may in some cases establish and appoint additional ones. In every village there is a chief officer, known by various titles—mayor, president, or chairman of the board of trustees. The other officers include a village clerk, a treasurer, and some police officer. Most villages have a street commissioner and, in some states, assessors and attorneys. Not infrequently villages are conterminous with school districts, and in New York State the village law makes provision for boards of health and for fire, water, lighting, sewer, and cemetery commissioners.

PART V
MUNICIPAL GOVERNMENT

CHAPTER XIX.

CHARACTERISTICS OF AMERICAN CITIES

A city has been defined "as a body of population massed in a small area."¹ To the elements of population and area should be added the fact of incorporation. An American city, therefore, is a municipal corporation occupying a definite area and subject to the state from which it derives all its powers and for which it exists as an area of local government. The American city possesses territorial and sociological characteristics, which result from the massing of population on a comparatively small area. It has, furthermore, a definite relation to the state government as an area of local administration. And, finally, as a corporation it has definite powers and performs certain very important functions for its inhabitants.² Definition

A city is formed because a number of persons are from various motives drawn together at a particular place. In the United States the considerations which caused and continue to cause the development of cities are defensive, political, commercial, and industrial. It was not uncommon in colonial times for the colonists to group themselves around a fort; for example, Pittsburgh had its origin in the settlement which grew up around Fort Pitt. In like manner, some cities had developed around the army posts in the West. Washington is an example of a city caused by political forces, and not a few of Reasons
for existence
of cities

¹W. B. Munro, *The Government of American Cities* (3d ed.), p. 29.

²One of the most comprehensive and detailed studies of the characteristics of cities is given by Dr. A. F. Weber, "The Growth of Cities in the Nineteenth Century" (1899), *Columbia University Studies in History, Economics, and Public Law*, Vol. XI. Briefer treatments are by D. F. Wilcox, *The Great Cities of America*, and *The American City*; F. J. Goodnow and F. G. Bates, *Municipal Government* (1919), chaps. i, ii; W. B. Munro, *The Government of American Cities*, chap. ii, with references. For further references see W. B. Munro, *Bibliography of Municipal Government*.

our state capitals have developed because a particular locality was chosen as the seat of the government of the state. By far the greater part of the American cities, however, have been founded and developed as the result of trade or industry. Of these two motives trade is the more important. If there were no external trade the limit of the industry of the city would depend solely upon the demand of the local markets. It is only by trade that the products of one locality can be brought to other localities and exchanged for other products. Trade thus depends upon transportation, and the greatest cities of ancient and modern times have developed along the routes of transportation. Wherever the process of transportation is broken, and the goods transferred from one form of carriage to another or from one owner to another, a city was almost sure to develop. Thus the early American cities developed at the seaports like Philadelphia, New York, and Boston, which were the terminal points of the import trade. In modern times the development of Chicago and the great inland cities of the West is in part explained by their being points of transfer. While trade is responsible for the founding and development of the largest cities in the United States, industry is more important in the cities of the second class. In both New York and Chicago a greater percentage of the population is engaged in commerce or transportation than in industry. Philadelphia, the third largest city in the United States, is an exception in that it has a larger proportion of its population engaged in industry. In some cities with a population under 500,000 the industrial inhabitants are from two to five times as great as those engaged in commerce.

Area It is almost impossible to generalize concerning the area of American cities. This varies from Los Angeles, California, which has an area of 365 square miles with a population of more than 575,000, to West Hoboken, New Jersey, with an area of 1.5 square miles and a population of about 40,000. New York City has an area of more than 300 square miles; New Orleans, 198; Philadelphia, 129; Chicago, 199. No other cities are more than 100 square miles in area and not many

are over 50; a large number extend between 10 and 20 square miles; while about a third have less than 10.

The growth of cities is a modern phenomenon. This is particularly true in the United States, where the rapid growth of cities has surpassed that in all other countries. Not only are cities developing quickly, but the urban population is increasing more rapidly than the rural population. Thus the census of 1920 (see table following) shows that 54,318,032 out of a total population of 105,708,771 in the continental area of the United States were found in cities and towns of more than 2500 inhabitants; that is, 51.4 of the population was urban, and 48.6 rural.

POPULATION

	1920	1910	1900	1890	1880
Urban . . .	54,318,032	42,623,383	30,797,185	22,720,223	14,772,438
Rural . . .	51,390,739	49,348,883	45,197,390	40,227,491	35,383,345

PER CENT OF TOTAL POPULATION

	1920	1910	1900	1890	1880
Urban . . .	51.4	46.3	40.5	36.1	29.5
Rural . . .	48.6	53.7	59.5	63.9	70.5

Since 1880 this change has been going on with rapidity. It is impossible to state at present to what extent the World War retarded or accelerated this movement. In the decade between 1900 and 1910 the percentage of urban to the total population increased from 40.5 to 46.3. Without doubt the war increased the concentration in certain industrial communities, but, likewise, the decline in immigration between 1914 and 1920 retarded the growth both of the total population and of the urban population as well. This concentration of the majority in cities profoundly affects the economic and social life of the entire country. It increases, moreover, the interest and importance of municipal government, since the larger part of the population of the United States, so far as its local government is concerned, is found not in counties or townships but in chartered municipalities. The urban population of the United

States is increasing more than seven and a half times as fast as the rural—in the last decennial period the urban population increased 25.2 per cent, while of the rural districts containing a population under 2500 the increase was only 3.4 per cent. Nine and one-half per cent of the population in the United States is to be found in cities of more than 1,000,000 inhabitants, and 15½ per cent live in cities of more than 500,000. In spite of the remarkable growth of some of the large cities, the great majority of the urban inhabitants of the United States is in cities of less than 25,000. Thus, although the greater part of the total population of the United States is urban, the majority of that urban population is distributed in comparatively small cities which are untouched or affected only to a slight degree by the problems confronting the largest cities.

Sources of
the increase
in popula-
tion

The population of cities grows in two ways: by natural increase of those within the city and by the migration of those who were born outside of the city. In the past the natural increase without immigration was not sufficient to maintain the population of the city. The death rate was higher than the birth rate.¹ Thus it is estimated that in London the ordinary death rate during the seventeenth century was approximately fifty persons per thousand, and not until about 1800 did the annual death rate fall below the birth rate.² Similar conditions existed in the United States. Hence one reason for the continued growth of the cities has been the decline of the death rate.³ By far the larger part of the greater population, however, has come from migration. In European cities this migration is from a relatively short distance, but not so in the United States. Although it is true that there is a steady flow of native-born inhabitants from the rural districts to the cities, this is greatly enforced and surpassed by immigration from abroad. Such migration and immigration are from four to five times as large as the natural increase in city population.⁴

¹A. F. Weber, *The Growth of Cities in the Nineteenth Century*, p. 231.

²W. B. Munro, *The Government of American Cities*, p. 39.

³See W. B. Munro, *The Government of American Cities*, p. 30, for a table showing the declining death rate of four large American cities.

⁴A. F. Weber, *The Growth of Cities in the Nineteenth Century*, p. 246.

In spite of the large immigration of foreigners to the United States, in 1910 less than 15 per cent of the total population was foreign-born. In rural districts only about 7.5 per cent of the population was foreign-born, but an entirely different condition existed in cities. Of the total urban population 22.6 per cent was foreign-born, and in the eight cities with a population of more than 500,000, 33.6 per cent of the inhabitants was foreign-born. Even more startling is the percentage of foreign-born in the industrial cities of smaller size. Thus, in cities with populations between 25,000 and 100,000, twenty-seven had a foreign-born population of more than 33 per cent, and ten of more than 40 per cent, while Passaic, New Jersey, had a foreign-born population of more than 52 per cent. Even these figures are surpassed by the percentages for foreign-born and their native-born children. Of the total urban population 51.6 per cent was either foreign-born or born of foreign-born parents. Only 15 per cent of the population in Woonsocket, Rhode Island, was of native parentage; 13.8 per cent in Passaic; and 13.6 per cent in Lawrence, Massachusetts. In addition to this large foreign-born element the population of certain cities is complicated by the presence of the negroes. Taking the cities having more than 25,000 inhabitants, only 6.3 per cent of the population was negroes, but in certain cities the negro population was more than 50 per cent.¹ Startling as these figures are, a comparison will show that the percentage of aliens, while increasing in the country at large, has actually decreased in the cities.²

Economic reasons largely determine the place of settlement of the alien immigrants. While it is true that immigrants from certain countries have taken up large rural areas, the majority of the aliens first settle in the cities. This has been the case especially in the past few decades, when the character of the alien immigration coming into the country was such that the

Characteristics of the urban population:
(1) Distribution by race and nationality

[Reasons for alien concentration in cities]

¹ Charleston, South Carolina, 52.8 per cent; Savannah, Georgia, 51.1 per cent; Jacksonville, Florida, 50.8 per cent; Montgomery, Alabama, 50.7 per cent.

² Goodnow and Bates, *Municipal Government*, p. 27. The statistics in this paragraph are derived and adapted from this source.

immigrant was fit for little but unskilled labor. The cities, whether large or small, furnish employment for this labor. In the very largest ones, where a greater proportion of the population is engaged in commerce than in industry, the public works and the rough manual labor required by commerce absorb great numbers of unskilled laborers. In the cities of the second and third class, where the greater part of the population is engaged in industry, the invention and development of automatic machinery has opened a wide field for unskilled labor. Here the immigrants are likely to settle. Outside of the cities almost the only occupation which absorbs a large amount of alien unskilled labor is mining. Thus, in Pennsylvania and the other mining states a much higher percentage of aliens is found outside of the cities than is true in purely agricultural states. The development of groups or colonies of aliens of the same nationality naturally attracts aliens of their own nation to that region. Thus, although the original number of aliens of a particular nationality in any one community may have been small, aliens of the same nationality are attracted to the same locality. This in part accounts for the development of somewhat larger alien colonies in certain cities.

[Effect of
the alien
immigra-
tion]

It was formerly held that the large number of aliens in our largest cities was responsible for the evils too often found in the government of those cities. It may be doubted whether this excuse or explanation is adequate. As Professor Munro has pointed out, Philadelphia has a smaller percentage of alien population than any other of the largest cities of the United States, yet Philadelphia has been for years a conspicuous example of municipal misgovernment. It is entirely true that most of the aliens are unfamiliar with self-government and have no political traditions. It is also true that too often their ignorance is exploited by political leaders for selfish reasons, and it is also beyond doubt that leaders of their own nationality and the newspapers published in their native languages frequently give them incorrect ideas. Nevertheless the naturalized alien is not indiscriminating. His greatest weakness is his attachment to customs or traditions incompatible with American ideals and habits and his inherited suspicion and jealousy

of other nationalities. Thus, reformers have frequently found it impossible to gain the combined support of different groups of foreign-born citizens because of their unwillingness to unite with other nationalities and their fear that some cherished custom might be interfered with by a political change.¹

In the total population of the United States the males outnumber the females, but in the cities the reverse is true. This is readily explained by the different character of the occupations. In rural districts agriculture and mining employ more males than females; in the cities, however, certain types of industries employ more women than men. Moreover, to an increasing degree, women are finding employment in commerce and trade. This disproportion is constantly being increased,² especially in those cities where the industries employ a large number of women; for example, the textile industries. The effect of such disproportion is not important in itself, but it probably leads to certain very important and far-reaching results. While statistics show that most of the women engaged in industry are unmarried, a large number of married women are employed in different occupations. The number of married women employed in manufacturing plants is large.³ The effect of the employment of married women in industry is clearly brought out by the mortality tables. In Fall River, for example, where 33 per cent of all the women in the city work in industry, the average death rate of children under five years is 103.1 per thousand; in New Bedford, where the percentage of the women in industry is 22, the average death rate for children under five years is 93.7 per cent. This high mortality rate for children may not be entirely the result of the employment of the mothers, but may be caused by the low economic

(2) Statistics of population according to sex

¹See W. B. Munro, *The Government of American Cities*, pp. 34-36.

²See A. F. Weber, *The Growth of Cities in the Nineteenth Century*, pp. 299-300. Although there is a larger number of male births, the mortality during the first year is greater among males than females. A still greater mortality diminishes the number of males in their adult life, due to the more dangerous occupations in which they are engaged, to vice, and to excesses. Moreover, it has been found that more women migrate to cities than men.

³See Goodnow and Bates, *Municipal Government*, pp. 29-31.

condition of the family. In such cases it may be that the mother's work may result in improving the condition of the family and in actually lessening the rate of mortality. Nevertheless the laws of some states regulate the employment of women by limiting their hours and the character of their work because it has been demonstrated that long hours and certain types of work have a bad result upon their children.

(3) Statistics of population according to age

Cities contain a larger percentage of people between the ages of twenty-five and sixty-five than does the country at large. The curve of ages of men and women normally approximates a pyramid—the newly born forming the base, the very aged the apex. The curve of city populations, however, more resembles a top. The heavy mortality of infants somewhat narrows the base, the large immigration between the years of fifteen and sixty-five tends to expand the curve at this point, while the mortality above the age of sixty, being greater in cities than in rural districts, tends to sharpen the top of the curve.¹ The cities therefore contain an undue proportion of people of middle age and at the height of their mental and physical activity. There are fewer children and fewer old people. Hence there is a relatively larger percentage of their population engaged in production than is true in the rural communities. Thus the productive population is burdened with the care of fewer dependents, whether young or old, than is the country population. As a result, it might reasonably follow that the population of the city would be more alert and animated than the country population.

(4) The marriage rate in cities

The marriage rate in cities is higher per thousand than that in country districts. Several reasons may account for this. In the first place, the cities contain a greater percentage of persons of marriageable age than do the rural districts. In the second place, economic conditions, which give the city-dweller a greater income power than the country-dweller, increase the opportunity for marriage. It must not be overlooked, moreover, that in many cities the industrial life gives to married

¹See A. F. Weber, *The Growth of Cities in the Nineteenth Century*, pp. 300 et seq. W. B. Munro, *The Government of American Cities*, p. 31, reproduces a chart showing the age curves of France and of Paris.

women the chance for employment. It may be, too, that the statistics of cities with regard to marriages performed are more accurately kept than those in rural districts. Finally, in an appreciable number of cases the inhabitants of rural districts go to the cities to have the marriage ceremony performed. Nevertheless, in spite of the higher marriage rate in American cities, there is a relatively smaller proportion of married persons in cities than in rural districts. This may be explained in several ways. In the first place, the rural immigration to cities is largely an unmarried one, thus leaving an undue number of married persons in the country. Not infrequently married couples leave the city and take up their residence in suburbs, and so decrease the number of married persons within the city. Finally, the higher male mortality in the city lowers the relative number of married persons and adds to the number of widows.

The birth rate in cities was formerly lower than that in country districts, but such is not now the case. In general, at the present time, the birth rate increases with the density of the population and therefore is higher in cities than in the rural districts and in the country at large. One explanation which was formerly put forward was that this birth rate was due to the fecundity of the aliens, but it has been found that among the native-born the birth rate in cities is higher than in country districts. A more obvious and correct explanation of the phenomenon is that the city contains more women of childbearing age than does the country. The economic influence of the city, moreover, must not be overlooked. Under the factory system in industry a man may marry early because female and child labor soon become a help rather than a burden.¹ However, with the increasing restrictions on the labor of women and children, and the development of economic foresight and social ambition, there is no guarantee that the birth rate in cities will continue to remain higher than that in country districts.²

(5) The
birth rate
in cities

¹ A. F. Weber, *The Growth of Cities in the Nineteenth Century*, p. 341.

² Ibid. p. 338, quoting A. T. Hadley, *Economics*, pp. 48-49: "High comfort and low birth-rate are commonly associated, because comfort is made to depend upon prudence. Let the comfort be made independent of prudence, as in the case of the pauper or criminal, and the birth-rate tends

(6) The
death rate
in cities

The death rate in cities is everywhere higher than in the country. Formerly the death rate not only exceeded the birth rate, but on account of plague and pestilence it nearly decimated certain cities. Not until the nineteenth century could it be said safely that the average death rate was below the average birth rate. Before the nineteenth century the growth of cities had been almost entirely from migration, a large part of which went to replace the loss by death. As might be expected, the death rate in cities is larger for children under one year of age, but the statistical tables published by the Census Bureau show that the death rate for all ages is greater in the cities than in the rural districts, and with the exception of the ages between five and fifteen is greater in cities of more than 100,000 population.¹ It thus may be affirmed that the death rate at all ages increases with the density of the population. The causes for this high death rate are not far to seek. For children under five years old the crowded conditions of the city, the lack of proper food and of opportunity for play, and the prevalence of disease all account, in a large measure, for the abnormally large number of deaths. For adults the dangerous occupations which the city-dwellers engage in and the general wear and tear of urban life tend to increase the death rate. It is true that all cities have taken heroic measures to preserve the health of their populations and that the death rate in all cities has steadily declined—in New York from 25.8 per thousand in 1886 to 12.9 per thousand in 1920, and in other cities to a less degree.²

[Attempts
to reduce
the death
rate]

Wherever large aggregations of population are gathered the problem of preserving their health increases almost in geometrical proportion with the size of the population. The obvious to increase rather than diminish. . . . It is not that social ambition *in itself* constitutes a greater preventive check to population than the need of subsistence; but that the need of subsistence is felt by all men alike, emotional as well as intellectual, while social ambition stamps the man or the race that possesses it as having reached the level of intellectual morality. Ethical selection can therefore operate on the latter class as it does not on the former. The intellectual man has possibilities of self-restraint which the emotional man has not."

¹A. F. Weber, *The Growth of Cities in the Nineteenth Century*, p. 346.

²See W. B. Munro, *The Government of American Cities*, p. 30, for a table compiled from the reports of the United States Census Bureau.

dangers which threaten such concentration of population as the cities show are to be found in the inadequate or impure water supply, in the improper disposition of the wastes, and in the lack of general cleanliness of the community. It is here that the cities put their first efforts, and it is from the result of a pure water supply, a scientific disposition of the city's waste, and clean streets that most of the immediate results in the decline of the death rate are to be noticed. Even more care is necessary than this with regard to the housing of the population, the provision for recreation grounds, the inspection of food and of the milk supply in particular, and its complement, the ice supply. Moreover, the laws regulating dangerous occupations and the employment of women and children in industry are aimed at the same result; that is, to reduce the death rate and to improve the health of the community. The success of these movements depends upon the efficiency of the municipal government. As Professor Munro has well said, the death rate is the barometer of administrative efficiency.¹

It was formerly held that the city-dweller was less healthy (7) Health in cities than the countryman. The crowded conditions under which he lived, the monotony of his task in the industrial life due to specialization, and the lack of outdoor exercise were believed to produce a weaker type than that which developed in the country. In the nineteenth century, however, the adoption of compulsory military service has shown that in France, Germany, and Italy the percentage of those rejected for the army on account of physique was greater for the country districts than for the towns. In the United States, however, the physical examinations of six million men under the Selective Service Act showed that a higher percentage of city-dwellers were rejected on account of physical defects.² This somewhat reverses

¹W. B. Munro, *The Government of American Cities*, p. 40.

²Second Report of the Provost Marshal General on the Operations of the Selective Service System (1919), p. 159, quoted by W. B. Munro, *The Government of American Cities* (3d ed.), pp. 43-44. But compare Goodnow and Bates, *Municipal Government*, p. 28, "Of the total number rejected as unfit, 63 per cent were from the country and 37 per cent from the cities."

the former theories that the improved sanitary conditions, food quality, and standard of living produced a higher type of physical development in the cities than in the country.

(8) Intellectual standard

It is impossible to estimate the intellectual standards of any two parts of the country. About the only criterion is the test of literacy. The census of 1910 showed that 4.9 per cent of the total white population of the United States was illiterate. In cities of more than 25,000, however, the percentage of illiteracy was only 4.3 per cent. It should be remembered, moreover, that to the cities in general comes the great mass of illiterate immigrants. Nevertheless, not only is the percentage of illiteracy smaller in cities than in the country at large but this percentage is growing less and probably will continue to decline at an increasing rate. The Immigration Act of 1913 excluded all immigrants unable to read and write. In the country districts, and especially in the cities, the school facilities are being improved and compulsory education is being extended by increasing both the years of school attendance and the length of the school year. In addition the city furnishes greater opportunities for advanced education by means of night schools, settlement classes, and vocational schools. Moreover, city life greatly handicaps the illiterate in economic advancement, which is quite universally conditioned by the ability at least to read and write.

[Literacy not the sole standard for intelligence]

The ability to read and write is, on the whole, a poor standard by which to judge the intellectual ability of a community. The education of the city-dweller has been well described by J. A. Hobson in the following words:

That town life, as distinguished from town work, is educative of certain intellectual and moral qualities, is evident. . . . While there is reason to believe that town work is on the average less educative than country work, town life more than turns the scale. . . . If, however, we examine a little deeper the character of town education and intelligence, certain tolerably definite limitations show themselves. School instruction, slightly more advanced than in the country, is commonly utilized to sharpen industrial competition and to feed that sensational interest in sport and crime which absorbs the attention of the masses in their non-working hours; it seldom forms

the foundation of an intellectual life in which knowledge and taste are reckoned in themselves desirable. . . . Scattered and unrelated fragments of half-baked information form a stock of "knowledge" with which the townsman's glib tongue enables him to present a showy intellectual shop-front. Business smartness pays better in the town, and the low intellectual qualities which are contained in it are educated by town life. The knowledge of human nature thus evoked is in no sense science; it is a mere rule-of-thumb affair, a thin mechanical empiricism. The capable business man who is said to understand the "world" and his fellow-men, has commonly no knowledge of human nature in the larger sense, but merely knows from observation how the average man of a certain limited class is likely to act within a narrow prescribed sphere of self-seeking. Town life, then, strongly favors the education of certain shallow forms of intelligence.¹

Although the average income of the city-dweller is larger than the countryman's, he seldom owns his home. According to the Census of 1910, although three quarters of the entire wealth of the whole country was to be found in cities, a small part of the city-dwellers actually own their houses—in Greater New York only 11.7 per cent, and in the borough of Manhattan only 2.9 per cent. The effect of this is to make the city-dweller less conservative than he who lives in the country. Since the greater weight of taxation falls upon real estate, the majority of the voters in the city feel only indirectly the increase of taxation. They are thus much more ready to sanction increased expenditures and to demand improved and better living conditions than are those who live in the country.

About the only index to the moral standards of a community is the amount of crime committed in it. In this respect the city has a worse record than the country. The number of arrests for crime increases generally in proportion to the density of the population, and the amount of crime in the great cities, particularly the seaports, is appalling. Several mitigating circumstances, however, may be mentioned. In the first place, since the majority of the population is in the cities it would be natural to find a greater amount of crime, but the

(9) Ownership of property

(10) Moral standards of the city

¹ A. F. Weber, *The Growth of Cities in the Nineteenth Century*, p. 300, quoting J. A. Hobson, *The Evolution of Modern Capitalism*, pp. 338-339.

percentage of crime is more than the larger proportion of the population justifies. When the crimes are analyzed, however, it is found that the crimes against the person—that is, assaults and violence—are not much above the proportion according to population. But crimes against property are far above their true proportion, especially in the case of the crime of larceny. This, in part, may be explained by the larger opportunities: by far the greater part of the country's wealth in personal property is to be found in the cities. It should be remembered, moreover, that criminals naturally gravitate to the city, for the cities give them a greater opportunity to follow a career of crime. Finally, the population of the cities is subject to more violent alterations of condition: employment is less continuous in the city than in the country; wages in the city may be higher, but they are less certain; and men may be thrown out of employment into idleness, which enhances the temptation for crime. It is certainly true that there are more crimes committed in the city in proportion to its population than in the country, but it is doubtful whether the proportion of criminals is greater.¹

(11) Hu-
manitarian
movements
in cities

The cities, on the other hand, are the centers of great charities and humanitarian movements. More is done in the city to relieve poverty and suffering and to improve the social and living conditions of all classes than is possible in any country district. The concentration of wealth, the leisure which this wealth gives to certain classes, and, perhaps, the acute consciousness of the evils to be remedied, brought about by the density of the population, compel the city-dweller to a higher sense of his obligations to the community than is found in the country. The cities, to some observers at least, are cesspools of crime and vice; to others they are the source of many of the most charitable and humanizing movements in the whole country. Both observers are in part correct: the cities present most violent contrasts; in them extremes meet. From the resolution of the contending forces in the cities, however, has come much of the progress which has made the United States so remarkable.

¹A. F. Weber, *The Growth of Cities in the Nineteenth Century*, p. 408.

CHAPTER XX

THE DEVELOPMENT OF MUNICIPAL GOVERNMENT IN THE UNITED STATES

Chartered communities have existed in the United States since 1641. There are thus two hundred and sixty years of municipal experience through which it is possible to trace the development of municipal institutions. Beginning in colonial times with a few boroughs of the English type, American municipalities have increased in number until the United States contains more cities than any other country in the world and has led the way in adopting new features for governing its cities. These experiments have not always been happy; indeed, Lord Bryce described the government of American cities as the "one conspicuous failure" in our system. It is thus advisable to trace the development of city government in the United States through these two centuries and a half in order to point out the errors of previous generations and to understand the problems which face the present.

THE COLONIAL PERIOD¹

Before the American Revolution there were about twenty chartered boroughs in the English colonies of North America.² Colonial boroughs
The earliest community to receive a charter was Agamenticus, Maine, chartered by Sir Fernando Gorges in 1641. In 1647 Gorges granted a charter to Kittery, Maine, and in 1705 the village of Bath, North Carolina, received a charter. Aside from these little hamlets all the chartered communities in the colonies were to be found in New York, New Jersey, Pennsylvania,

¹One of the best brief treatments of this subject is given by Professor J. A. Fairlie, *Essays in Municipal Administration*, chap. iv.

²For a list of colonial boroughs see J. A. Fairlie, *Essays in Municipal Administration*.

Maryland, and Virginia. The last place to be chartered before the American Revolution was Trenton, New Jersey. Although the advantages of incorporation were recognized, the movement had gained little headway during colonial times. In New England the system of town government, which from 1694 allowed the towns the privileges of corporations, gave greater freedom than any formally granted charter. After the middle of the eighteenth century the opposition of the colonists was probably a deterrent to the provincial governors in granting charters. Whatever the practice of the nineteenth and twentieth centuries has developed in municipal government, the foundation is to be found in these colonial charters.

Organiza-
tion under
the colonial
charters

The colonial charters were granted to the boroughs not by the assembly of the colony, but by the governor. These charters created corporations and gave the boroughs the right of perpetual succession, the right to receive, hold, and dispose of lands and chattels, the right to sue and to be sued in the courts of the colony, and the right to have a common seal. The official title of the corporations was generally "the mayor, aldermen and commonalty of —."

[The
mayor]

In the great majority of the boroughs the mayor was regularly appointed by the governor of the province. His term was fixed at one year, but reappointments were frequent. He presided at the meeting of the aldermen and common council, but had no power of veto. He was charged with the execution of the laws, and in some boroughs was given control over granting certain licenses. In general he had no power of appointment, but not infrequently he himself exercised the functions of minor offices.

[The
aldermen]

In the colonial boroughs the number of aldermen was small — never over eight, and more generally five or six. The aldermen were chosen in various ways. Not a few of the boroughs were "close corporations";¹ that is, having the power to elect their successors. In such corporations the aldermen were chosen by the council; in other boroughs they were elected popularly by the freemen—generally at large, although in Albany and New York they were chosen by districts.

¹ Annapolis, New York, and Philadelphia.

The councilmen were commonly more numerous than the aldermen and, in close corporations, were chosen by the aldermen, mayor, and recorder. Elsewhere they were elected by popular vote. The aldermen and councilmen formed one body, which, in order to transact business, must have the mayor and a certain number of aldermen present. [The councilmen]

The recorder was supposed to be the legal adviser of the government, but there was no requirement, except in Norfolk, that he should be learned in law. In close corporations he was chosen by the corporations; elsewhere he was appointed by the governor of the colony. There were other officers also—a town clerk in every borough; a treasurer in most of them, although an officer is rarely mentioned in the charters; and in New York and Albany, in boroughs which were conterminous with counties, there was a sheriff. In the charters for some of the boroughs fines were prescribed for failure or refusal to accept office, and in Philadelphia the fines were often paid in preference to service. [The recorder]

The most marked point of difference between the colonial boroughs and the modern city was the presence of freemen. As a rule, the corporation was given the power to admit freemen to the corporation. Women, as well as men, were eligible, and small fees were charged for this privilege. The privileges of the freedom of the corporation were twofold. In most boroughs the freemen had the monopoly in certain trades, which, in Albany, gave them a great advantage in the Indian trade; all freemen, moreover, were members of the electorate. In the close corporations this franchise was of little importance, as the vacancies in the governing board were filled by the remaining members. In other boroughs the franchise was extended to all freemen and as a rule to freeholders or those who could qualify by the possession of a small amount of personal property. [The freemen]

The colonial boroughs were judicial rather than administrative organizations, the result partly of English precedent and partly because few of the modern municipal functions were performed. The mayor, recorder, and aldermen constituted a court which had jurisdiction over petty cases. These same Functions of the colonial boroughs

officers were also members of the county courts. The legislative functions of the councils were small; they might make ordinances "for the good rule and government of the body corporate," but in some instances there was a requirement that these must be submitted to the provincial governor for approval. In administration the common council took charge of the markets; they had power to keep streets free from rubbish and obstructions, and in a few cases streets were laid out by their authority. The water-supply was derived during colonial times entirely from pumps and wells, although in 1774 the council at Albany undertook a primitive reservoir system. The preservation of peace and order by means of the patrol of the streets was hardly begun during the colonial period, yet New York and Philadelphia had established night watchmen before the middle of the eighteenth century. Street lighting did not commence until 1761 in New York, and then was considered a part of the police function. There were no public schools in any of the boroughs, no parks, no libraries, no administration of charitable relief.

Finances

With such limited municipal functions it is not surprising that the financial operations were also limited. The revenue of the borough was derived largely from fines, licenses, and fees for the markets, ferries, and docks. The early charters gave no authority to levy direct taxes, but the colonial legislatures soon extended the power of taxation, and by the middle of the eighteenth century the direct tax became a definite and regular part of the municipal revenue.

MUNICIPAL DEVELOPMENT FROM 1775 TO 1820

Characteristics of this period

The establishment of the independence of the United States brought about certain significant changes in municipal government.¹ The most important change was the substitution of the state legislature for the governor in granting city charters.

¹ The best brief treatments of municipal development are given by J. A. Fairlie, *Municipal Administration*, chap. v, and W. B. Munro, *The Government of American Cities* (3d ed.), chap. i. A more extended treatment is given by Eugene McQuillin, *Treatise on the Law of Municipal Corporations*, Vol. I, pp. 1-159.

In those cities which were incorporated immediately after the Revolution, charters were issued not by the governor of the state but by the state legislature. This established a precedent which has been followed ever since and which has had far-reaching results. A charter granted by the state legislature is like any other statute. It is thus subject to legislative amendment or revocation. This change sets the precedent for the mischievous interference in municipal affairs which characterizes the middle period of American municipal government. Another change was found in the disappearance of the close corporation. None of the newly chartered cities were allowed to establish close corporations, and the state legislatures amended such charters to provide for a popularly elected council. This is an example of the supremacy which the state legislatures exercised over the municipalities. Not even the existing charters which had been granted by the royal governors were free from legislative interference.

The organization and powers granted by the state legislatures in the early charters do not greatly differ from those of the colonial charters. By 1796, however, the influence of the national Constitution was clearly felt, and the forms of national government were bodily transferred to the cities. The Baltimore charter of 1797 thus provided for a bicameral city legislature. The council was composed of two members chosen annually from each of the eight wards, while the other house was chosen by an electoral college, which also selected the mayor. In addition, the mayor was given, like the president of the United States, the veto of ordinances passed by the council. But this was a novelty and was not widely adopted until much later. Perhaps more far-reaching than any formal frame of government was the general feeling that checks and balances should be set up to insure the separation of the executive (that is, the mayor) from the legislative department (that is, the common council). As Professor Munro has well pointed out,¹ there was no reason for such a separation of powers in municipal government. It was necessary only in the ultimate power in the state. In such subordinate institutions as

Municipal
organiza-
tion under
the first
state
charters

¹The Government of American Cities, pp. 7-9.

municipalities it had no place. Yet "the wisdom of the framers" is still invoked to perpetuate the bicameral system and the separation of the legislative and administrative powers.

Municipal
functions

Until 1820 the functions undertaken by the municipalities increased in degree rather than in number. Few new duties were taken on, and only the somewhat slow increase in population compelled the cities to extend their functions quantitatively. Thus New York City, with a population of 100,000 in 1810, expended only about \$100,000.

Growth of
cities

In 1820 there were only thirteen towns in the United States with more than 8000 inhabitants and only six cities with more than 20,000 population. The total urban population was less than 500,000, or barely 5 per cent of the entire population of the country.¹

Municipal
politics

In the first decades after 1800 municipal politics became subordinated to national and state politics. Two reasons may account for this: in the first place, the functions of the city were not important enough to cause the formation of local parties, and, secondly, the interference of the state in municipal affairs gave an opportunity to reward success in state political campaigns by the "spoils" in the cities.

MUNICIPAL DEVELOPMENT FROM 1820 TO 1850

Character-
istics

This period is characterized, first, by the changed method of choosing the mayors. The mayors in some cities had always been chosen by the common council, but in 1821 the constitution of New York established this as a general rule for the state. The period is also characterized by a further extension of the principles of democracy. In the charters issued to Boston and St. Louis in 1822 and to Detroit in 1824 the mayors were chosen by popular vote. Finally, during this period most cities did away with the property requirements and established manhood suffrage.

Municipal
organiza-
tion

Although in an increasing number of cities the mayors were popularly elected, they had received very little enlargement of their powers. The power of vetoing ordinances was not

¹J. A. Fairlie, *Municipal Administration*, p. 80.

extended, nor was the appointing power of the mayor enlarged. Choice by election did give the mayor a more independent position. It prepared the way, however, for the enlargement of his powers which came when the council had demonstrated its inefficiency.

As a general thing single chambers still were the rule in the municipal councils, although the charter of Boston provided for a bicameral council. In the New York charter of 1830, however, the bicameral system was adopted, "for the same reason which has dictated a similar division of power into two branches, each checking and controlling the other, in our general government."¹ This charter also provided for the establishment of separate departments by the council, but this provision proved too vague, and the municipal functions continued to be performed by committees of the council. This charter, moreover, gave the mayor the right to veto the ordinances passed by the council.

The
municipal
council

With the increase of population in cities municipal functions were extended in both number and character. The question of water supply became pressing, and New York City constructed the Croton aqueduct. As has been shown, most cities had established in the previous period a night watch, and several others now set up during these years small bodies of rather ill-organized and inefficient day police. Fire protection was becoming general and was performed by volunteer companies, although the municipalities in some instances furnished the apparatus. In a few cases the municipal councils appointed the school boards, but in general these were considered separate from the municipal government.

Municipal
functions

The extension of municipal functions necessitated increasing attention to finance. Most of the city charters gave a grant of general taxing power to the cities instead of relying upon the system of special authorization for special purposes. The power was subject to definite limitations. First, cities were limited to a certain percentage of the assessed valuation of the property in the city. For extraordinary purposes—to meet

Finance

¹ J. A. Fairlie, *Municipal Administration*, p. 83, quoting Address of the Convention of 1829.

expenses beyond the amount which could be so obtained—recourse to the state legislature was necessary. Moreover, there was always in every city charter a limitation upon the objects of taxation, and no municipality could raise money for purposes other than that specified by the charter. This seriously hampered the development of municipal functions and required frequent appeals to the state legislature, thus perpetuating the system of state interference in municipal affairs. In so doing, it put the city at the mercy of the legislature and reduced the discretion of the city authorities.

The spoils
system

During this period the spoils system gained a firm hold in municipal affairs. In most of the cities appointments rested with the council, which was generally chosen from wards. The names and organization of the national parties were transferred to municipal contests, and the council members soon regarded these appointments as legitimate patronage to be used to further their political fortunes. In addition, the system of rotation in office was extended to municipal officers. Thus, at the very beginning of the extension of municipal functions an inefficient method of the selection of officers was fastened upon the cities.

MUNICIPAL DEVELOPMENT FROM 1850 TO 1870

Character-
istics

During this period there was a steady growth of the urban population. This increase began to force the undertaking of new municipal functions and the very rapid development of those functions which had previously been performed by the cities. The period also shows a constantly increasing tendency on the part of the state legislatures to interfere with municipal affairs and to divide the city government into independent departments. Along with this came a decline in the importance and character of the municipal councils. Finally, this period shows the spoils system, if not at its height, flourishing almost unchecked.

Municipal
functions

As might be expected, the concentration of population in New York City, which, in 1850, had 500,000 inhabitants, compelled the city to improve its means for protection. Consequently, in 1845 New York established the first disciplined

police force and also a paid fire department. Municipal water-works were established in Boston, Chicago, and Baltimore. Other cities were soon obliged to follow New York in the establishment and maintenance of a police force. The ordinary functions of city government which had been more or less irregularly attempted since colonial times—that is, the care of the streets and the relief of the poor—were rapidly extended, and most cities made a beginning of a school system.

Although the forms of municipal organization remained almost unchanged, they were overlaid with special bodies and instruments created by the legislature. The council, while nominally in control of the city's policy, as a matter of fact was losing power. This was accomplished in various ways.

Changes in
organiza-
tion :

It has been noted that many cities were forced to appeal to the legislature for additional powers in order to perform the functions which were necessary and, particularly, to finance these functions. It has, moreover, been seen that the state legislatures from the very first regarded the cities as merely subordinate areas of administration and the city charters as mere statutes subject to amendment at any time. These legislative amendments might be either formal amendments of the city charter or special statutes passed for some particular purpose or for some particular city. During this period the number of special statutes increased enormously and to such an extent that the city councils were in many instances reduced almost to impotency. The dangers of this habit were recognized, and several states¹ by constitutional amendment forbade the practice. None of these states, however, contained any large cities, and in none of them was the problem acute.

(1) Special
statutes

Many of the new functions which were given to cities by special statutes or charter amendments were conferred not upon the city council but upon newly created departments, independent of the municipal council. In previous periods it has been seen that the schools and poor relief were more or less independent of the action of the council. Now, however, almost every new function conferred upon a city was vested in an independent department. Thus, in 1849 the new charter

(2) Growth
of special
departments

¹Arkansas, Florida, Iowa, Kansas, Nebraska, and Ohio.

for New York City created twelve executive departments, whose heads were chosen by popular vote. Similar changes were made in Cleveland, and in 1851 the water board of Chicago was established with an independent power to borrow money. Another example of the declining position of the council is seen in the limited power of veto which was conferred upon the mayor.

(3) Legis-
lative com-
mission

During this period, moreover, the powers of the council were limited still further through the establishment of special legislative commissions or boards, which were appointed not by municipal but by state authority. For example, in 1857 a state park commission was established for New York City and a state metropolitan police board for New York and Brooklyn; in 1860 a state police board was set up for Baltimore and in 1861 for Chicago; in 1865, state commissions were established for New York City for the fire and health departments and for the licensing of saloons; and in 1870 construction of the new city hall in Philadelphia was intrusted to a state commission. These commissions were all-powerful within the fields granted them by the statutes, and in New York they went so far as to control five sixths of the municipal expenditures.¹

Reasons
for these
changes in
organiza-
tion

Various reasons are assigned for this condition of affairs. The transfer from council committees to popularly elected departments was perhaps the result of the wave of democracy, which reached its height in 1850. But this was not unconnected with the inefficiency of the municipal council. As has been shown, municipal politics were party politics, and the men chosen to the city councils were not of such a caliber as would lead thoughtful men to intrust them with the new functions which the city was obliged to attempt. The councils had shown themselves particularly inefficient and careless of the city's best interests in the granting of franchises and the making of contracts, and in the functions which still remained in their hands they proved inefficient and were constantly subject to criticism. It cannot be said, however, that the legislative commissions which were appointed to remedy the maladministration and mismanagement of the councils were a very great

¹J. A. Fairlie, *Municipal Administration*, p. 90.

improvement. Since these were under the control of the state government they were subject to the violent alterations and disorganizations consequent upon any change in the political complexion of that government.

The spoils system was pretty thoroughly fastened upon the cities before the beginning of this period. With the enlargement of the municipal functions came an opportunity for the extension of the spoils system. The patronage of a large city was a prize which both parties were anxious to obtain. If this were left to the disposition of the local authorities the successful party in the state campaign would be defrauded of what it considered its legitimate perquisite. This, perhaps, is the real explanation of the growth of commissions appointed by the state authorities and the state control of the administrative functions of the city. It resulted to an increasing degree in the subordination of city issues to the necessities of the campaigns of the national parties, and it prevented the development of any purely municipal parties.

The spoils system

MUNICIPAL DEVELOPMENT FROM 1870 TO 1900

The decades from 1870 to 1900 are characterized by the continued growth of cities and the consequent extension of municipal functions. Of even more importance, however, are the first attempts at the reorganization of the framework of municipal governments. The first years of the period are distinguished by notorious examples of misgovernment in the largest city in the United States, New York, and other cities in turn suffered to a less degree, but these evils concentrated public attention on them and forced reform.

Characteristics

In 1870 there were 226 cities, with a population of more than 8000; in 1880 there were 286 such cities, which contained 22.5 per cent of the entire population of the United States; and there were nearly a hundred cities with a population of more than 20,000. Ten years later the number of cities with a population of more than 8000 had risen to 448, and there were 28 cities with a population of more than 100,000, 15 of 200,000 or more, and 6 with a population of more than 500,000. These vast populations were recruited not simply

Growth of cities

from natural increase and by migration from the country districts but also from a huge alien influx. Hence the problems of these decades are complicated by the presence of large numbers of aliens who, through the lax enforcement of the naturalization laws too often become subject to the political control of corrupt leaders.

Limitations
on state
interference

In this period an increasing number of states adopted constitutions prohibiting the passage of special statutes for cities,¹ and two states, Missouri and California, passed amendments allowing the cities to frame their own charters.

Reorganiza-
tion

[Appoint-
ments]

[Removals]

[Veto]

Municipal
functions

These decades saw many new charters granted to cities and many amendments to the existing charters. The general characteristic of these amendments was toward strengthening the authority of the mayor, thus still further weakening the powers of the council. In the majority of the charters the appointment of many of the municipal officers was put into the hands of the mayor. In some cities the mayor was given the power to remove on definite charges the officers whom he appointed, or, as in New York, to do this with the approval of the governor. This appointing power, however, was not generally an absolute one. After the analogy of the Federal Constitution, the city charters usually allowed the mayor to nominate and the city council to confirm his nominations. This opened the door to trading and logrolling, but on the whole it was an advance over the system either of popular election or of state-appointed officers. In the last decade of this period an increasing number of cities vested the absolute appointing power in the mayor. Practically all the city charters during these years give the mayor the power of veto of measures and, in some cases, of separate items in finance bills.

Municipal functions were rapidly extended during this period. The older cities required a higher standard of efficiency and the smaller cities demanded an expansion of their functions, especially with regard to the maintenance of streets, protection against fire, the reorganization of the police forces, and public education.

¹ California, Illinois, Louisiana, Missouri, New Jersey, Pennsylvania, Texas, and West Virginia.

With the extension of these municipal functions and their application to large bodies of population concentrated in a small area, the expense of municipal administration rapidly increased. By 1900 the annual expenditure of New York City was more than \$100,000,000, and the expense per capita was swiftly rising with the growth of the city. The New York City charter of 1873 introduced a novelty in dealing with this problem. The council had proved extravagant and inefficient; a new board was created known as the board of estimate and apportionment, which consisted of the mayor, comptroller, president of the board of aldermen, and president of the department of taxes and assessors. This board was given the duty of preparing the budget and became the central authority in municipal finance, thus exerting an effective control over the entire system of municipal government. During this period other cities adopted boards of control, budget boards, or some institution to perform similar functions.

Finance

The evils of the spoils system had been clearly seen in the previous period, and in these later years attempts were made to remedy them. State after state passed civil-service laws and established commissions for the supervision of municipal appointments. The municipal service was classified and appointment was made only as a result of competitive examination, while officers could be removed only for cause and in many cases only after a hearing. Although the civil-service movement had its origin during this period, it was not extended to all the municipal officers nor was it found in the majority of the states.

The spoils system

MUNICIPAL DEVELOPMENT FROM 1900 TO 1920

The decades from 1900 to 1920 are noteworthy because of the radical changes in the framework of city government and because of an awakened and lively interest in municipal affairs. This interest, it is true, was manifested during the last decade of the nineteenth century, but it has become increasingly effective during the last twenty years.

Characteristics

From 1900 to 1920 the urban population has increased from 30,000,000 to 54,000,000—a greater increase than in any of the periods which have been examined. Moreover, in 1920,

Growth of cities

as has been seen, more than half of the entire population of the United States lived in cities. Municipal administration is thus a problem of prime importance to the majority of the people of the country.

Municipal
reforms

[Home rule]

The municipal reforms of the previous periods were aimed at special abuses or tendencies, rather than at any radical change in the form of government. These reforms have steadily continued. The movement for home rule—that is, the independence of the city from state control—has gathered an increasing momentum. Some states give to the cities the absolute power to frame their own charters; others, like New York and Massachusetts, provide certain types of charters which cities may adopt. Almost everywhere there is a tendency to restrict special legislation and state interference in municipal government. Nevertheless, since the state is coming to realize that its welfare is dependent upon that of the cities, there has been an extension not of state interference with municipal government but of the functions of state administration. With this consideration in mind, the movement for home rule is not so important as is sometimes supposed.

Reorganiza-
tion of city
government

[Govern-
ment by a
commission]

In 1901 the commission system of government was established for Galveston, Texas, thus introducing a novelty in municipal framework. The threatened bankruptcy of the city led to a reorganization of the government not on political but on business lines. It meant the breaking down of the traditional separation of the powers of legislation and administration. The movement spread rapidly, particularly in the Middle West, until today there are approximately three hundred and fifty commission-governed cities. The weakness of commission government was soon made manifest, and about ten years later the city-manager type was introduced, thereby concentrating in one hand the administrative functions of the city. This movement, as well, has made rapid headway, until there are about two hundred cities having city managers. In those cities which retained the traditional forms of government increasing power has been given to the mayor. More and more frequently it is the case that his powers of appointment and removal are extended and made independent of the council;

[The city
manager]

[The
"strong
mayor"]

especially in finance the mayor's power has grown, and in some states to the extent that the city council may not increase any item in the mayor's budget.

As might be expected, municipal functions have developed most rapidly during this period. The extraordinary growth of the cities has necessitated the building of vast waterworks and sewage-disposal systems, while in the largest cities the transportation question is one of great importance. The old problems of street pavement, lighting, and protection against fire have been met with always greater efficiency. A high standard is demanded and a far higher standard attained than in any previous period. Newer functions are constantly being undertaken by the cities. As far back as 1850 the development of parks was considered a legitimate city function. Today this has expanded to an extraordinary degree, and playgrounds, recreation centers, and municipal amusements are frequently provided. Increasing attention is given to the development of the city streets, and a whole new movement—that of city planning—is attempting to add to the efficiency, convenience, and safety of city life. The school systems are undertaking new functions, not simply in the development of night schools and kindergartens but in the maintenance of specialized schools, which give training for specific objects. More and more care is taken of the poor, the sick, the unfortunate, and the delinquent, until the appropriations for these objects rank second in the expenses of all the cities of the United States. As a result the appropriations for schools rank first among the expenses of the cities of the United States, and the combined amounts appropriated for sanitation, recreation, health conservation, and charities are almost double the sum spent upon any other service except schools.¹

Municipal
functions

¹ Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), p. 78.

CHAPTER XXI

THE RELATION OF THE CITY TO THE STATE¹

The city a
corporation

The distinguishing mark of American cities is the fact that they are municipal corporations. A municipal corporation has been defined as "the body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purposes of local government thereof. . . . [It is] established by law partly as an agency of the State to assist in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town, or district which is incorporated."² The city is a public corporation (that is, one established for public purposes), and as such it is called into being at the pleasure of the state, independently of the will of the people of the locality affected. It is true that in many instances the inhabitants of the district are consulted, but this is not legally necessary.³ A municipal corporation, like all other corporations, is the creation of the legislature of the state. It has been shown that the boroughs of colonial times received their charters from the governor, and as such the charters were beyond the interference or control of the colonial legislatures. But it has also been shown that the

¹The relation of city and state is well treated in brief form in W. B. Munro's "Government of American Cities," chap. iii, and in Goodnow and Bates's "Municipal Government," chaps. vi, vii. One of the most comprehensive sources is found in Howard L. McBain's "The Law and the Practice of Municipal Home Rule." The fifth edition of J. F. Dillon's "Commentaries on the Law of Municipal Corporations" (5 vols.) considers this subject exhaustively with references to the decisions of the courts. A brief account of municipal home rule is found in *Bulletin No. 11* of the Bulletins for the Massachusetts Constitutional Convention, Vol. I, p. 415. Mention should also be made of F. J. Goodnow's "Municipal Home Rule." Other references may be found in W. B. Munro's "Bibliography of Municipal Government."

²J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. I, pp. 58-59.

³*Ibid.* p. 142.

state legislatures, since their establishment, have exercised complete and undisputed control over the charters of all cities, whether these had been granted by a colonial governor or by the legislature itself.

The legal position of the city in the state thus depends primarily on the fact that it is a corporation. As such, it is the product of the state legislature and is entirely subordinate to it in all ways not forbidden by either the Federal Constitution or the state constitution. The position of the city is, moreover, affected by the fact that it is a public corporation, organized for the purpose of performing functions which are of interest not only to the city itself but to the state at large. The state, therefore, is compelled to regard the municipal corporation in a very different light from the private corporations created by the legislature. Thus, state control has an entirely legitimate sphere in municipal activities.

Legal
position of
the city in
the state

The basis of municipal government is to be found in the city charter. These charters generally contain four important elements:¹ (1) The first clause creates a corporation by declaring the city to be a "body corporate and politic" with a definite name by which it "shall have perpetual succession, may use a common seal, sue and be sued, purchase, hold, and sell property." (2) A definition of the territorial boundaries of the city. (3) Provisions relating to the governing body of the corporation. These provisions include not merely a description and enumeration of the powers of the mayor and common council but also the qualifications for the voters of the city. In some charters the provisions for holding elections are prescribed.² (4) Perhaps the most important feature of the charter is the minute and detailed enumeration of the powers of the city council. This section contains the grants of power and the limitations which condition practically all the municipal activities. The most important of these grants is the one which allows the city to create debts, usually, however, subject to very definite limitations. As will be seen, the

The city
charter

¹ J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. I, pp. 94-95.

² These features will be discussed at length in the succeeding chapters.

city charter gives to the city all the powers it has, and the courts quite uniformly have construed city charters very strictly. Therefore it is of vital importance to the city that a proper and adequate grant of power be contained in the charter. It is true that cities may secure additional powers by general statutes applicable to all cities, or from specific powers conferred upon them by special legislation. But such legislative interference, while necessary and salutary in some instances, has not always brought about good results. Without doubt the present tendency is toward endowing a city with adequate power and freeing it from the capricious and sometimes partisan interference of the state legislature.

Powers of
the city

The city charter generally grants five classes of powers to the city: (1) the powers incident to all corporations; (2) power to levy taxes; (3) power to appropriate and spend money; (4) power to perform certain public services; and (5) power to enact and enforce local police ordinances.¹ Since the city has no inherent authority the source for the exercise of all these functions must be found in some definite grant, either in the charter or in statutes. The burden is placed upon the city of proving that it actually possesses the powers it wishes to exercise. Where the power claimed is an ordinary one the courts are fairly liberal in construing the clauses of the charter or statutes, but they are very strict in the interpretation of grants of power which are out of the usual or which may touch the right to liberty or property of the citizens.² Thus, although the courts do not construe with too great narrowness the powers granted to the city for establishing streets, parks, or schools, they are extremely strict—frequently to the point of denial—with regard to the privilege of engaging in some of the newer municipal activities. For example, it required a special act of the legislature of Massachusetts amending the charter of Taunton to allow that city to establish a dental clinic for school children.³

¹ This classification is followed by Goodnow and Bates, *Municipal Government*, p. 93. A more extended treatment is found in J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. I, pp. 439-586.

² See J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. I, pp. 452-454, especially footnote 2, pp. 453-454.

³ Goodnow and Bates, *Municipal Government*, p. 95.

A more usual application of this tendency is found in the refusal to cities of the right to engage in any sort of public-utility enterprise not directly connected with the police power of the municipality.¹

The powers granted by the charter are usually exercised by city ordinances; that is, by an act of the legislative body of the city. The charter generally prescribes the procedure for passing such an act, and in most cases the consent of the city executive is necessary. To be valid a city ordinance must be (1) within the powers granted by the charter and (2) adopted according to the procedure prescribed by the charter. The courts, moreover, have laid additional limitations upon this ordinance power. (1) Ordinances must be reasonable. What constitutes a reasonable or unreasonable ordinance is generally determined by the court in a consideration of each special case, but judicial decisions now furnish a great body of precedents.² (2) They must not make unjust discriminations. (3) They must not unreasonably restrain trade. This does not mean that trade or business may not be subject to regulation and limitations, for all trades are liable to some restrictions. These regulations, however, must be for an obvious and real public purpose and must not, under guise of the exercise of the police power, attempt certain limitations on business.

How the
city exer-
cises these
powers

The liability of cities is determined by the twofold position which the city occupies. It is a public corporation engaged in performing public functions, and it is also engaged in certain business or commercial operations which are unconnected with the functions of government. The city thus occupies a position between the state, which may not be held responsible for its action, and a private corporation, which is responsible for all its acts.³

Liabilities
of cities

A city is responsible for all the contracts which it makes, whether these are to carry out the governmental business or in furtherance of some private or commercial or business enterprise which the city has undertaken.

Liability
for contracts

¹ See W. B. Munro, *The Government of American Cities*, p. 81.

² *Ibid.* pp. 86-87, with references to McQuillin and to Dillon.

³ Goodnow and Bates, *Municipal Government*, p. 95.

Liability for
torts

A distinction is made in holding the city liable for torts: when acting in its public or governmental capacity the city is not liable for its torts, but when acting in its private capacity it is liable. Moreover, with regard to torts committed by its agents, a similar distinction is made. The city is not liable for the acts of those agents or officers engaged in purely governmental service, but in the case of the officials and employees who are engaged in the commercial or business enterprises which the city undertakes, the city is liable for damages on account of their torts, whether these arise from negligence or from inefficiency. Thus a city may not be held liable for the action of the fire department, but is held liable for all torts and damages a person may suffer from the administration of the water department. The general rule is that where the city performs some special function for which it receives definite compensation it ceases to act in its general or governmental capacity and is subject to the same liabilities as a private corporation.¹

Attitude of
the legisla-
ture toward
the cities

Such being the position of the city in the state, and such its powers and responsibilities, it is evident that it occupies a purely subordinate position and that the whole story of municipal development depends upon the attitude which the people of the state and the legislature manifest toward it. This has varied from time to time; but inasmuch as the theory of strict construction of charters has always been applied, and since the growth of the cities has necessitated new or additional powers, the cities have constantly been forced to ask for special legislation and legislative consideration. Moreover, as has been shown, in certain periods of municipal development the legislatures have for partisan purposes frequently interfered in municipal affairs.

Special
legislation

Cities have always been subjects of special legislation. By 1850 its mischievous results were beginning to be obvious, and efforts were made to check or control it. These measures were

¹ For a more extended treatment of this subject see W. B. Munro, *The Government of American Cities*, pp. 90-101. The whole question of liabilities is exhaustively discussed in J. F. Dillon's "Commentaries on the Law of Municipal Corporations," Vol. IV, pp. 2807-3064.

not immediately successful; in fact, the volume of special legislation increased in the next decades. For example, in 1870 the New York assembly passed 808 acts, of which 212, amounting to three fourths of the bulk of the statutes of the year, related to cities and villages.¹ Between the years 1884 and 1889 the legislature passed 1284 acts, 390 of which affected New York City.² In 1890, 67 laws were passed by the legislature of Maryland affecting Baltimore alone.³ In Massachusetts, between 1885 and 1908, there were four hundred special laws passed relating to Boston; and in 1916—in spite of the fact that Massachusetts had adopted the optional charter law—over three hundred requests for special legislation were referred to various committees, and 171 were enacted into laws.⁴ Such a volume of special legislation is hurtful and inefficient. Its necessity may possibly arise because of an ill-drafted charter or an improper classification of the cities of the state by general law. But errors in charter drafting or in classification of cities are extravagantly rectified if that process compels the legislature to remedy them by special legislation, which is wasteful of the time and energy of the legislature. That body at best is very busy, and in many states the length of its session is strictly limited. To insist that a large proportion of its efforts should be devoted to considering municipal problems in which, after all, only a small portion of the legislators are interested, is to place too great a burden on an already overworked body. In their anxiety to secure the desired legislation the cities have, moreover, been known to maintain expensive lobbies for the purpose of influencing the legislators. Such special legislation is also hurtful in many instances to the particular city. It is frequently passed not for the purpose of benefiting the city concerned but to further the fortunes of a political party and a certain economic group. Instances are not wanting where some cities have been deprived of valuable privileges by the legislatures when their own

¹ Goodnow and Bates, *Municipal Government*, p. 100.

² F. J. Goodnow, *Municipal Home Rule*, p. 23.

³ Goodnow and Bates, *Municipal Government*, p. 100.

⁴ W. B. Munro, *The Government of American Cities*, pp. 61-67.

governments desired to retain them. Special legislation is inefficient. The majority of the members of the legislature are not vitally interested in the special bills reported by the committees. The various committees themselves, as has been shown,¹ are made up by the organization in the legislature and not all the cities by any means are represented on their committees. In some states it has become the habit of the legislative committees to consult and take the advice of the members of the majority party who happen to come from the particular city affected. If it should happen, as it sometimes does, that certain interests dominate the political fortunes of that city and the members of the legislature from it, the result is that the legislative action is controlled by these interested parties rather than by the best interests of the city. At best, special legislation is likely to be inefficient; at its worst, it may be used to further corruption and misgovernment.

Limitations
on the
power of the
state over
the city

The control of the state over the city is limited in two ways: first, by the general prohibitions of the Federal Constitution which prohibit the state from depriving any person of property or liberty without due process of law, from impairing the obligation of contracts, or from taking private property for public use without just compensation. Second and more important, however, are the limitations which are found in the constitutions of the various states. These limitations have steadily increased in number. As has been shown, during the first fifty years of municipal growth the cities were left entirely at the mercy of the state legislature. By 1850, however, the evil of such unregulated power was evident, and certain states began to insert limitations in their constitutions in order to protect the cities from the dominance of the legislatures. These restrictions are expressed in different ways. Some of them deal with the methods of framing or amending the charter and prohibit the passage of special laws for individual cities.² Others are designed to prevent the legislature from allowing cities to do things which have been found dangerous and hurtful; for example, to grant perpetual franchises to public-service

¹ See pages 210-213.

² At least thirty states have adopted restrictions of this sort.

corporations or to exceed their borrowing power. Another class of restrictions is aimed at insuring the consent of the citizens of a municipality to any proposed change. In some states no change can be made in the charters unless ratified by a referendum of the citizens. Other states, however, have gone further and have established municipal home rule; that is, they allow the cities to frame their own charters without legislative interference.

The first state to prohibit special legislation was Ohio. The constitution of 1851 decreed that the state legislature could pass no special laws for the individual cities, but that all cities should be organized according to a general law which should have application throughout the state. In 1852 the legislature passed such a general law, dividing the cities of the state into two classes. The process of classification, however, continued until at one time there were eleven classes of cities, eight of which contained but a single city. Legislation, therefore, for any one of these eight classes was equivalent to special legislation for an individual city. In 1902 the supreme court of Ohio overruled its previous decisions by declaring "that the present classification cannot be regarded as based upon differences in population, or upon any other real or supposed differences in local requirements. Its real basis is found in the differing views or interests of those who promote legislation for the different municipalities of the state."¹ This forced the legislature to adopt a general code for all cities having a population of more than five thousand. The result was almost as unfortunate as the minute classification which had previously existed, in that the largest cities in the state were given no greater or other powers than the small cities and were thus unable to deal with the special problems which confronted them. This condition continued until 1912, when the constitutional provision of 1851 was replaced by one allowing the cities to adopt by a referendum any charter or law which the legislature might pass.

Restrictions
by prohi-
bition of
special
legislation

¹*State v. Jones*, 66 Ohio St. 453, quoted by J. A. Fairlie, *Essays in Municipal Administration*, p. 100. Chap. v deals with "The Municipal Crisis in Ohio," leading to the adoption of the general code. See also H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 621-645.

The optional
charter
system

Some states are still unwilling to grant municipal home rule, but recognize the evils of a rigid municipal code. Several of these states—for example, Massachusetts, New York, North Carolina, Ohio, and Virginia—have enacted what may be described as optional charter laws; that is, by general statute the legislature frames several different types of charters which any city within the state may adopt by a referendum vote.¹ The Massachusetts system offers four types, including the commission-government and city-manager plans. Six different styles are presented in the New York law, which any city except New York, Buffalo, or Rochester may choose. This plan has certain advantages in theory. In all probability it presents plans which have been carefully considered, and it provides for a certain degree of uniformity while allowing for the variations which different cities may require. It is designed to save the city the inconvenience and expenditure of time and energy involved in framing its own special charter, and it frees the legislature from the pressure which cities always exert for the adoption of their particularly designed charters. Moreover, it gives the cities home rule within certain limits. Unfortunately, however, not many cities have taken advantage of this plan, and in Massachusetts at least the practice still prevails for cities to frame their own charters and attempt to force adoption by the legislature.

Regulated
special
legislation

Some states have recognized the impossibility of prohibiting all special legislation for cities and have therefore tried to regulate it. This is sometimes done, as formerly in Ohio, by a classification of the cities according to population. In other states provisions are inserted which require the assent of a municipal officer or of the citizens of the municipality before such special legislation is put into effect. The method adopted in New York provides for both the classification of cities and the assent of the mayors of the cities concerned. Legislation may be adopted for any one of the three classes into which the cities of the state are divided without consulting the municipal authorities. Legislation for any single city, however, must be submitted to the mayor of that city. If it receives approval

¹ See W. B. Munro, *The Government of American Cities*, pp. 57-58.

the bill goes to the governor for his assent, but if the bill is not approved it must be passed a second time by the state legislature. Some cities have taken advantage of the provision which allows the mayor to retain the act for fifteen days, and acts passed at the end of the legislative session have been kept by the mayor until the legislature has adjourned and then returned with his disapproval, thus preventing the possibility of such legislation during that session. A better system was adopted by Illinois in 1904 and by Ohio in 1912, which referred all charter amendments and special legislation to a popular referendum of the citizens of the municipalities in those states. This gives the citizens an emphatic veto upon all state legislation concerning their municipality, although it does not guarantee the adoption of all measures which they might desire. It has been used in the case of Chicago with great effect in order to prevent the legislature from imposing measures which were disliked by the people. The disadvantage of this system lies in the inherent limitations connected with the use of the referendum, which is hardly adapted to the decision of complicated questions by popular vote. Yet, as has been shown, the complicated questions of municipal government were not always accustomed to receive careful or unbiased consideration in the legislature.

The most far-reaching attempt to free cities from legislative interference is by the establishment of municipal home rule.¹ This phrase—municipal home rule—is given different meanings in different states and at different times. In some it may

Municipal
home rule

¹The most comprehensive treatment of this subject is found in H. L. McBain's "The Law and the Practice of Municipal Home Rule." *Bulletin No. 11*, of the Bulletins for the Massachusetts Constitutional Convention, Vol. I, p. 415, gives a brief treatment of this subject. J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. I, pp. 154-175, discusses the home-rule provisions of certain states with illustrative cases. F. J. Goodnow, *Municipal Home Rule*, presents the early views. Goodnow and Bates, *Municipal Government*, chaps. vi, vii, particularly pp. 103-113, 121-131, and 138-148, give an excellent discussion of the system of home rule, the limitations thereon, and the relative effects of legislative and administrative control of municipal functions. W. B. Munro, *The Government of American Cities*, pp. 61-79, gives an excellent brief discussion.

mean the mere prohibition against special legislation, and in others the adoption of the optional charter system. Again, it may mean the approval of the city for any legislation passed by the state. In its wider and more general sense municipal home rule signifies the power of the city to determine its own form of government, choose its own officers, and regulate its own activities. Thus, in its widest sense, municipal home rule may mean local self-government. The weight of the judicial opinions is that no city is endowed with all the functions of such self-government,¹ but that, as the Supreme Court has declared, the cities are mere departments of the state.² In its more usual sense municipal home rule includes the power of the city to frame its own charter, either with or without the assent of some state authority, and to conduct its government according to the charter it has framed.

Extent of
municipal
home rule

Up to 1919 twelve states had adopted some system allowing municipalities to frame their own charters.³ The earliest state to adopt this plan was Missouri, which provided in 1875 that any city council might call for the election of a miniature convention in order to frame the charter; if approved by four sevenths of those voting at a general or special election, this charter went into effect without the necessity of obtaining the assent of the state authorities. California adopted a similar scheme in 1879, Washington in 1889, and Minnesota in 1896,

¹ J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. I, pp. 154-156.

² *Barnes v. District of Columbia*, 91 U.S. 540. For the decisions of state courts denying the right of local self-government see J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. I, pp. 164-175.

³ Missouri (1875); California (1879); Washington (1889); Minnesota (1896); Colorado (1902); Oregon (1906); Oklahoma (1908); Michigan (1908); Arizona, Ohio, Nebraska, and Texas (1912). In addition, Wisconsin in 1919 passed a constitutional amendment through its first stage; Utah framed an amendment which is to be submitted to the people at the next election; and Pennsylvania passed two amendments through one session of the legislature which will have to be submitted a second time. See H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 114-117, for a table showing the machinery of home rule. See also *Bulletins for the Massachusetts Constitutional Convention*, Vol. I, pp. 447-449, for a table showing the states following this plan and the method of initiation, ratification, and amendment.

but most of the states now utilizing this plan did not adopt it until the twentieth century. Minnesota, Michigan, and Ohio are the only states east of the Mississippi which allow this system.

The majority of states permitting home-rule charter-making provide for summoning a charter commission, as a rule elected by the citizens voting at large.¹ In Oregon there is no procedure prescribed by the constitution, but the provisions of the initiative and referendum are applicable. The work of the charter commission, which in most states is called a board of freeholders, is then submitted for the approval of the voters at either a general or a special election.² In most all states a majority of those voting on the question is required for the ratification of this charter. Missouri, however, stipulates four sevenths of those voting at the election except in the case of St. Louis, where only a majority is required. Minnesota has a similar requirement. In eight of these states the charter is put into effect without the approval of the state authorities; in the others the legislature or governor must act before the charter is finally adopted.³ Amendments to such charters may be proposed either by the council or by petition of a certain percentage of the voters, varying from 5 per cent in Colorado and Nebraska to 25 in Arizona. These amendments are subject to popular ratification, and where the state authorities are required to act on the original charter similar action is required for the amendments.⁴

Procedure
in making
home-rule
charters

Considering home rule from the first point of view—namely, the power of the city to determine its own frame of government—there can be little objection to any one of the methods

Limitations
on home-
rule charter-
making

¹In Minnesota the judge of the district court may appoint the commission and must appoint it on petition of 10 per cent of the voters.

²In Oregon the council may approve the charter, but its act is subject to a popular referendum if demanded.

³In California it must be approved by a concurrent resolution of the legislature; in Oklahoma and Arizona by the governor if not in conflict with the state constitution and laws; in Michigan by the governor before it is submitted to the voters, but his veto may be overridden by a two-thirds vote of the charter commission.

⁴See H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 656-667, for a discussion of the working of this machinery.

described here. It is not of vital importance to the state whether a city adopts the ordinary type of government (that is, mayor and council), the commission, or the city-manager plan. The interest of the state lies rather in the control of both the municipal functions and the municipal officers appointed to enforce state and municipal laws. Municipal charter-making in the sense of adopting some particular scheme of municipal government may well be performed by the city itself without much state supervision. But, as has been shown, a city charter deals not simply with the framework of the government but with the electorate and its functions and with the powers exercised by the city council; it also determines the activities in which the city may engage. The state is vitally interested in these functions and duties.

Choice of
municipal
officers

Self-government involves the right to choose the officers who shall administer the functions of government. Municipal home rule, therefore, would vest in the cities the choice of such officers. Yet, as has been seen,¹ the failure of the city to appoint proper and efficient officials has led the states again and again, sometimes at the request of the cities themselves, to take over the appointment of certain city officials. Particularly was this true with regard to the police and fire commissions and in some instances the financial officers. The extension of this movement had two causes. In the first place, certain cities appealed to the legislature for protection against their own government; this was emphatically true in machine-ridden cities, where the parties or certain interests were exploiting the city for their selfish purposes. A second reason is found in the fact that many municipal officers are charged with the enforcement of state laws; for example, the police, and, formerly, those officials charged with the enforcement of liquor regulations. Such officials might rightly be classified as state officers. The courts, holding the traditional narrow view with regard to the powers of a municipality, have tended to interpret away constitutional prohibitions on state interference by assuming that these officers were state rather than municipal officials. Some state control over certain officials who are the

¹See pages 307-309.

agents for the enforcement of state laws is obviously necessary. Consequently the city-made charters might properly be restricted or the officials chosen under them subjected to some form of state regulation and supervision. What this should be will be discussed later.

By far the most important part of city charters consists in the grants of power which determine the functions of the city. In these the state is vitally interested. Not only do the cities contain the larger part of the population of the United States, but the activities of this population may affect the entire state in many ways. For example, the question of the water supply of a great city is one which affects not simply the city itself but the surrounding communities. In the same way, the disposition of the sewage of a large city is of vital importance to the entire state. Particularly is this true when several municipalities are in close proximity to each other. Thus, for example, Massachusetts has very properly and, on the whole, successfully dealt with the water supply and drainage of the so-called metropolitan district, which contains not only Boston but several cities of the second class. The financial condition of the cities is also a matter for state concern. Therefore a very definite limit should be placed upon the functions which a city-made charter grants to the council. In what fields these limitations should be exerted and how they should be exercised will be discussed later.

Municipal
functions

The city as a political unit will be considered in the next chapter. Here, however, it is necessary to note the integration of politics in city and state as a factor in determining the question of home rule. Historically the national parties have dominated both the states and the municipalities. The doctrine of the complete subordination of the city to the state strengthened this tendency. In a previous chapter¹ it has been noted that the successful party in state politics regarded the patronage of the city as its legitimate perquisite. This feeling grew stronger, if anything, in the decades immediately following the Civil War. The federal system of government, in which the powers of the state are distributed between the

Political
relation of
the city to
the state

¹See page 366.

national, state, and local units, may at times require the control of all these units by a single party in order to realize the complete policy of that party.¹ Thus, party names and organizations are the same for national, state, and municipal parties, and the organization of the party in each area is not independent, but integrated with the organization in other areas. With the constant interference of the state legislature in municipal affairs this subservience of municipal to state parties was perhaps necessary. To many observers such necessity has now disappeared, and efforts are made to divorce municipal from state politics. It is questionable whether this is possible or even desirable. The growth of cities has brought more than half of the people under their jurisdiction. The cities themselves are constantly reaching out in every part of the state and affecting more and more the life and resources of the rest of the state. What touches the cities for good or evil reacts upon the entire state. With the extension of manhood suffrage and the concentration of the alien element within the city, it may be questioned whether the cities should be allowed to exercise without restriction or supervision the "right of self-government," which some of them claim but which the courts have denied. That cities should be freed from captious and selfish interference in their affairs by the legislature is obvious, but that cities can never be allowed complete and entire municipal home rule is equally clear. Hence the question to be answered is to what extent and in what measure this state control over cities may best be exercised.

Fields in
which state
control is
properly
exercised:

At the risk of some repetition it is advisable to summarize very briefly the fields in which state control of municipal functions is advisable or necessary. The city from one point of view is but an area of the state government. Emphatically is this true in the conduct of elections. There is no doubt of this when one remembers that in some states the urban population is so much greater than the rural and that the policy of the state is determined by elections in the cities. If the states are to be maintained as political entities it is necessary

(1) Elec-
tions

¹ Everett Kimball, *The National Government of the United States*, pp. 138-139.

for them to be able to enforce their laws and to supervise elections in the cities.

The power to levy taxes is a sovereign power. At first the cities were not granted the general powers of taxation. To surrender such entirely to the cities might disrupt the financial system of the state and possibly interfere with the state's resources not only in taxation but in other fields. Closely connected with taxation is the power to incur debts. Since the cities contain more taxable wealth than the rural areas, the states cannot well allow the cities the complete and free use of that wealth; to do so would hamper the state. No city, whether from its own point of view or that of the state, should be allowed to bankrupt itself by a heavy load of debt. (2) Finance

The greater part of the duties of the municipal police is the enforcement of state laws. As such they are emphatically state officials and suitable subjects for state supervision. When it is remembered that the percentage of crime is higher in the cities than in the state at large and that the rapid means of transportation which the motor puts at the disposal of the criminal makes capture not always certain, it is clear that the inhabitants of the entire state are vitally interested in the preservation of law and order in the cities. (3) Police

The question of public health is very important. It has been shown that the death rate increases with the density of population, and there is no doubt that the concentration of population in the cities is an inviting field for epidemics. The health laws of the state must be applied to city and rural districts alike, and the entire state is interested and affected by the water supply of the city and the disposal of its waste. (4) Health

Education is coming more and more to be regarded as a state concern. In a democratic system of government this must be so because the success of the government depends in a large measure upon the intelligence of the electorate. One must admit, however, that the school systems of the cities are generally superior to those in rural districts, yet it is of vital importance that no opportunity be allowed for any deterioration of standard. (5) Education

- (6) **Charity** Charitable relief is steadily becoming more a matter of interest to the entire state. State institutions on the whole have proved superior to those maintained by local agencies. With the more scientific administration of charity it is probable that the relief of the poor, the unfortunate, or the defective can be administered more satisfactorily through the state authorities than by the duplication made necessary if the municipalities are to be responsible.

Methods of
state
control :
(1) Legis-
lative
control

The legislative control of municipalities was a principle of English law which was transplanted to the colonies; it had its origin in the theory of the supremacy of Parliament and the centralized government of England. Although it has been largely abandoned in England in actual practice, if not in form, it still persists in the United States. Theoretically the doctrine views the city as a corporation subject (like all corporations) to the control of the state legislature. The legislature grants the charter, and the legislature may extend, amend, or diminish the powers of the city. Viewing the city charter alone as the constitution of a subordinate corporation, this legislative control might be justified; but when the manifold functions and activities of the city are examined and the intense interest of the state in the efficient performance of these functions is realized, it will be seen that legislative control has serious defects. The defect is in the very nature of legislation. Legislation is the formulation of rules, not their enforcement. Legislative control, therefore, attempts to formulate, by means of statutes, minute rules for every imaginable situation; but such a task is impossible, since cities vary in their requirements and necessities. Thus, constitutional provisions to the contrary, legislatures are constantly obliged in one form or another to pass special legislation. Again, the legislature is unable to enforce its acts and is obliged to rely upon the courts. Finally, legislatures themselves are ill adapted to foresee the necessities of the cities and are often unwilling or unable to solve city problems. The political influence which the city member may exert in the legislature not infrequently leads that body to adopt measures contrary to the best interests

of city and state alike. This has been emphatically proved in connection with the control of municipal indebtedness.

Since the cities are corporations subject to law, the courts might be expected to be able to supplement the legislature in enforcing its provisions. In certain matters this is true. In enforcing a statute the courts may, for example, invalidate a city loan made contrary to law, but in such cases the political effect is awkward. The loan has been issued and the bonds are in the hands of the public, who have a natural feeling of resentment that they should be made to suffer loss from the act of a city council. In the second place, the judges and prosecuting officers, who enforce the state law, are the products of the same political system which controls the city government, and their action and point of view are not without bias when passing upon the acts of municipal authorities. There is, moreover, a wide field of municipal activity which is properly beyond judicial control. This is its discretionary power. The courts have no control over the exercise of the discretionary powers granted by the city charter, and the legislature can only forbid or prohibit. Thus the effective supervision of municipalities requires some other form of control than legislative or judicial.

(2) Judicial
control

The idea of administrative control originated in Europe, and much of the success of municipal government in Prussia is due to the relative absence of legislative control and the prevalence of administrative control. The advantages are obvious, particularly as regards discretionary powers. No legislature can hope to foresee all the wants of all the cities, nor are these cities or their needs uniform. But any legislature may lay down certain simple and comprehensive rules vesting in administrative authorities the power to apply these rules with such variations as the needs of the cities require. To an increasing degree the states are adopting this method. State civil-service commissions frequently hold examinations and apply the provisions of the civil-service law directly to the cities. The finances of the cities in many states are subject to administrative state control, while the city boards of education

(3) Admin-
istrative
control

and of health are governed by the rules and regulations of the state administrative authorities. Although administrative control has not developed to the same extent in this country that it has in England or in Europe, yet the results are generally excellent. It has somewhat limited the evils of special legislation, it has avoided the delay and injustice of judicial control, and it has brought about a more prompt and efficient state control in those fields where state administration is desirable.

CHAPTER XXII

THE CITY AS A POLITICAL UNIT

As a political unit the city must be examined from two points of view. It is an area within the state, and its inhabitants form a section of the general state electorate, whose action determines in part the political action of the state. But the city is also a political unit with its own very definite problems to solve. The population of the city, moreover, as has been shown, has different characteristics from that of the state at large. The political machinery in a city, therefore, is required to function for two purposes—for the state and for the city itself. The organization and operation of this machinery is most important, but it is conditioned by state laws rather than by municipal necessities. As such, it has been treated in Part II; in this chapter it is desirable not to repeat what has been previously said, but to show how the peculiar composition and problems of the city affect the general principles of political action.

Relation of
the political
organization
of the state
and the city

THE MUNICIPAL ELECTORATE

In any community the composition of the electorate is of vital importance; most emphatically is it so in cities. It will be remembered that the alien element is larger in the city population than in the country and that in some cities the foreign-born and their children far outnumber the native element. The city contains a greater proportion per thousand of people in middle life. Fewer city-dwellers own their homes, and thus the city electorate lacks the steadying influence found in the country. A greater proportion of the population of the city pay no taxes at all or only the poll tax. With these conditions in mind, it must be remembered that this electorate, through some form or other of political action, is called upon

Importance
of the
municipal
electorate

to perform directly or through its representative the manifold functions which the density of the population requires. The municipal government, which is the creature of the municipal electorate, is constantly facing complex and technical problems and is spending vast sums of money in their solution. On no other group of the population are such burdens laid. No other group is so heterogeneous, so lacking in tradition, nor so susceptible to political organization and manipulation.

Electoral
qualifica-
tions fixed
by the
state:

The electoral qualifications for the cities are fixed by state law. In spite of the different characteristics of the city population, the legislatures have treated the electorate of the state as a unit; they have not taken into account the various differences just described nor the peculiar problems which the cities face. From the point of view of the state as a political unit, perhaps this is justifiable, for in state political action the peculiarities of the city population are neutralized or corrected by those of the rural population. In the control of municipal affairs, however, there is no such corrective influence, and the city electorate, with all its limitations, is obliged to face and attempt to solve its peculiar problems.

(1) Citizen-
ship

Most countries require citizenship as a qualification for voting. This is not invariably true in the United States, for nine states allow aliens to vote when they have declared their intention to become citizens.¹ In former times—even where citizenship was required—the large cities furnished fertile fields for naturalization frauds, and it was not uncommon for political organizations to furnish evidence and witnesses for the purpose of naturalizing whole groups of aliens whose vote they might control.² In recent years, however, the whole procedure of naturalization has been revised and, by the control of the Department of Justice through the United States district attorneys, has been made much more effective.

¹Arkansas, Indiana, Kansas, Missouri, Nebraska, South Dakota, and Texas. In two states aliens are allowed to vote who are otherwise qualified and have declared their intention to become citizens before November 8, 1894 (Michigan) and December 1, 1908 (Wisconsin).

²James Bryce, *The American Commonwealth*, Vol. II, p. 103, gives a description of these conditions.

The voting age in every state is fixed at twenty-one, and since the ratification of the Nineteenth Amendment (1920) disabilities with regard to sex have been removed. (2) Age and sex

The requirements for residence vary greatly in the different states. In general they are fourfold. The first is residence in the state, which varies from two years¹ to only three months.² The most common period is one year. Residence in the county is required for a definite period, from one year in Alabama to ten days in Wisconsin.³ Residence within the city varies from one year in Mississippi and Virginia to ten days in Iowa and the other states.⁴ Residence in the electoral districts, precinct, or ward is also essential. This varies from one year in Mississippi to one day in Maryland. Sixteen states demand a thirty days' residence.⁵ (3) Residence

The term "residence" is a technical one. It differs from the terms "domicile" and "inhabitant" in that it is largely determined by the desire of the individual. A man's legal residence is commonly where he says it is, where he intends to remain, or in the particular community of which he wishes to be considered a member. Since in the United States state-income and personal-property taxes are levied by the jurisdiction in which the citizen has his residence, it is often of great importance to the individual just where he will declare his residence to be. Cases are not unknown of a person's keeping his residence in a state which has no income tax or in a town or city where the tax rate for personal property is low or the assessors complacent. Meaning of "residence"

The restriction of the franchise to legal residence in a city has an unfortunate effect. It is a matter of common knowledge that many of the large cities are surrounded by suburbs in which live a large population who draw their livelihood from

¹Alabama, Louisiana, Mississippi, North Carolina, Rhode Island, South Carolina, and Virginia.

²Maine.

³Oregon and Pennsylvania make no specified requirement for county residence.

⁴Iowa, Nebraska, South Dakota, West Virginia, Wisconsin, and Wyoming.

⁵For table of qualifications see the annual editions of the American Year Book and World Almanac.

Effect
of the
residence
requirement
on the
municipal
electorate

and are vitally interested in the city and its administration. These persons are deprived of any share in the municipal government, although their business is carried on in the city. This suburban element, moreover, is often the very one which the city can least afford to do without. It generally represents moderate success in business life and a higher grade of intelligence and stability than is found in the heterogeneous, shifting population of the city. In France and in Italy, on the other hand, it is recognized that a person who pays taxes in the city may have a greater interest there than in the place of his domicile, and he is therefore allowed to choose in which place he will vote. In England occupation of premises either for domicile or business purposes takes the place of the residence requirement. Thus in foreign cities it is possible that persons who are vitally interested in the affairs of the city may take part in its management, and the city is not deprived of the votes of an interested class.

(4) Educa-
tion

The qualifications in regard to literacy are fixed by the state authorities and have been fully discussed elsewhere.¹ It should be remembered, however, that the percentage of illiterates is lower in the cities than in the rural districts. It is too short a time since the passage of the Nineteenth Amendment to determine whether the percentage of illiterate voters in the cities is now greater than that in the rural districts. The organizations attempting to register women for the elections of 1920 found in some cities a surprisingly large number who could not pass the reading and writing test which is required in some states.

(5) Owner-
ship of
property

Rhode Island is the only state which requires ownership of property as a qualification for the city franchise. The constitution of 1842 required the ownership of real estate valued at \$134, or the payment of rent to the amount of \$7.² In 1888 manhood suffrage was established for state elections, but no person was allowed to vote for the election of the city council or upon the proposition to impose a tax or expend money in any town or city unless he had paid a tax on property valued

¹ See pages 40-45.

² Article II, Sect. 1.

at \$134.¹ In Virginia the legislature may prescribe a property qualification not exceeding \$250 for any county, city, or town.²

Payment of poll taxes is made a qualification for voting in several states.³ In certain others the payment of all state taxes is also required.⁴ Massachusetts and some other states require only that the voters shall have been assessed for the poll tax, which is a very different thing from having paid it. Where the requirement is that the voter shall have paid it, interested political organizations not infrequently pay this tax for certain kinds of voters. This is expressly forbidden by the constitutions of Alabama and Louisiana, and in those states, as well as in most of the Southern states, the provisions requiring the payment of taxes serve to disfranchise a large part of the negro vote. A requirement that the voter shall have merely been assessed for the poll tax is of practically no use, for it shuts out no one.

(6) Payment
of taxes

The preparation of the voting list involves the same procedure for state and municipal elections and is prescribed by the state laws already discussed.⁵ But the problem in the densely populated city is vastly different from that in the rural districts, and the laws of many states prescribe a different procedure. The most effective method requires personal registration for each election, as is the case in some of the larger cities. This, however, has been felt to place too great a burden upon the voter, and in a few states it is the practice to keep the voter's name on the list as long as he continues to be assessed for taxes. This method removes the test of continued interest in elections which one writer has found so desirable.⁶

(7) Regis-
tration

¹ Amendment VII.

² See Index Digest of State Constitutions.

³ Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

⁴ Mississippi, Pennsylvania, and South Carolina (of those not registered before 1893).

⁵ See pages 45, 61, 62.

⁶ See A. N. Holcombe, *State Government in the United States*, p. 158. For a contrary view see W. B. Munro, *The Government of American Cities*, p. 118.

THE MUNICIPAL ELECTORATE IN ACTION

Work of the
electorate:

The functions of the municipal electorate, like those of the state, are primarily in the choice of the officers and members of the municipal council. Through these officials, chosen by the municipal electorate, the greater part of the functions of the city is exercised. It is true that the devices of direct legislation are used in municipal government to a larger degree than in state affairs, but the greater part of the duties of the electorate is confined to the nomination and election of officers. The methods by which these functions are performed are of importance not only to the municipality itself but also to the state, of which the municipality is a part.

(1) Nomi-
nations

The whole process of nomination has been fully discussed with regard to state elections, and the merits of the convention system and the primaries have been presented. It is only necessary here to note the differences which distinguish municipal political action from that of the state at large. First, the convention system is absent. Except in the largest cities, nominations for municipal officers are commonly made in the caucus or primary. Thus the discussion of the relative merits of the convention and the direct primary for municipal elections is theoretical only. It might be that municipal conventions would have nominated better candidates, but inasmuch as the convention system has been so rarely used in municipal affairs, little data is available on which to base a judgment. In practically all cities the caucuses or primaries were once confined to the members of the political party, and in some cities participation in the primary could be obtained only by election to it. Although in general such a severe restriction was not required after the state began to interest itself in the process of nomination, the control of the primaries is still in the hands of the members of the party.

Nomi-
nations
generally
made by
caucuses

Closed
primaries

The non-
partisan
primary

The theory of the nonpartisan primary is that party designations have no place upon the municipal ballot. It is both an open and a direct primary; that is, it nominates candidates directly to office without the intervention of a convention and it is open because all members of the electorate may attend

irrespective of their party. The names appear on the ballot as the result of a petition signed by a small number of qualified voters, usually twenty-five. They are not in party columns, however, and are without party designation. The candidates for each office are arranged either alphabetically or by lot. Without any guide the voters are asked to pick out from the candidates the ones they wish to nominate. In counting the ballots the two candidates who receive the highest number of votes are declared nominated and their names, and theirs only, appear on the ballot at election. In some states, however, if any one candidate receives a clear majority of the votes cast, he is declared elected without the necessity of the formal election.

The nonpartisan primary is strictly not a primary, but a preliminary election. As such, it has certain merits and defects—to a slight degree it encourages independent candidates; furthermore, it narrows the choice at election to two candidates and thus prevents the election of any official by a minority of the votes cast, as frequently occurs when the final ballot contains several candidates. One of the greatest objections, however, is the burden which is put upon the voter. Nomination through the medium of parties gives some information to the voter; the party designation, while not necessarily a certificate of character and ability, does assure the voter that the candidate is acceptable to the party with which he generally acts. This is entirely wanting on the ballots in the nonpartisan primary. The other defects of the nonpartisan primary are those which have been mentioned in discussing the direct primary and deal with both the cost of the system and the character of the candidates nominated.¹ The nonpartisan primary was first used in Iowa in those cities adopting commission government, and has since been adopted by other cities.

Merits and
defects of
the non-
partisan
primary

Nomination by petition is an attempt to do away entirely with the system both of party conventions and of primaries, whether closed or open, direct or nonpartisan. According to this method the names of the candidates are placed upon the

Nomination
by petition

¹See pages 68-74.

ballot as the result of a petition. In Boston, when it was first adopted in 1909, the signatures of 5000 voters were required; in 1913 this was reduced to 2500. The petitions for nomination bear the name and address of each candidate, but no party designation. After being signed they are given to the election commissioners for verification. Unlike the primary system, nomination by petition gives every class or group in the community an opportunity to place the name of a candidate upon the ballot. This, however, is a dubious advantage, for as the number of candidates on the ballot increases, the possibility of the election by the minority of the voters also increases. Nor can it be proved that the caliber of the candidates nominated by petition is any higher than that of those chosen by the convention or primary system.

Effect upon
party or-
ganization

In theory these systems both encourage independence and weaken the control of the party organization. Without doubt independence is encouraged, but it may be questioned whether the party organization is very much hampered in its control by this independence. As has been pointed out,¹ under the old method the party organization was forced to conciliate rather than to discipline. Under the primary system any independent candidate may test his fate; he has no complaint if he fails, and the leaders of the organization can usually control enough votes to crush an insurgent. Although nomination by petition is in theory entirely independent of the party organization, yet the leaders of the organization generally in secret caucus pick out the candidates and circulate petitions in their favor.

Merits of
plans for
municipal
nomination

An ideal scheme of nomination has not yet been devised for use in American cities. In all systems that have been attempted either the power of the party organization is everywhere felt or else the voter is left entirely without guidance. According to Professor Munro the system should be simplified,² thereby decreasing the honor which most Americans attach to mere nomination. Certainly in the cities of other countries a simple and easy method of nomination seems to work well, but it may be questioned whether this would be the case in the United

¹ W. B. Munro, *The Government of American Cities*, pp. 135-136.

² *Ibid.* pp. 138-139.

States. It is to be feared that for many years to come American ballots would be burdened with the names of a multitude of candidates should we adopt the French system, by which any citizen may announce his candidacy, or the English method, which requires the petition to be signed by only ten voters.

Municipal elections are everywhere conducted according to state laws. Ordinarily these state laws make no difference between the procedure for the election of state officers and for the election of purely municipal officers. In some cases, however, chiefly as the result of a special law or privilege granted in the charter, a different date and different procedure is adopted for municipal elections than is followed at state and national elections. (2) Elections

In the attempt to remove municipal elections from the control of state and national parties, some states have set the date of these elections at a different time from the others. When the elections are held on the same date the state and the municipal-party organizations coöperate and manage a single campaign. This in itself is not objectionable if the best interests of both the state and the city were considered, but such is not commonly the case. In small cities municipal interests are subordinated to the advantages of the party in the state, while in very large cities the reverse may hold true. Thus, when the election dates coincide, it is almost impossible to have an unprejudiced expression of opinion on municipal issues. Political action in the city is unavoidably colored by the national or state party issues. The great argument in favor of holding the elections on the same date is the one of expense. It costs not far from a dollar for every ballot cast at a municipal election.¹ In addition there must be considered the legitimate expenses of the candidates and of the party organizations, which, although raised by subscription rather than by taxation, are met by the inhabitants of the city. To those who believe in the strong control of the city by the state, anything which would insure identity of party in both state and city would be advantageous. To such it is an advantage to hold the municipal and state elections on the same day. Time of
municipal
elections

¹W. B. Munro, *The Government of American Cities*, p. 140.

The ballot

One great disadvantage in setting the same day for both state and municipal elections is that it complicates the ballot. Either separate ballots must be distributed for the state and for the municipal elections, or the state ticket, already too long, must be still further complicated and lengthened. The effect on elections of the long and intricate ballot has already been discussed and the advantage of the short ballot set forth.¹ The ballots for municipal elections have ordinarily been shorter than those for the state; fewer officers have as a rule been chosen by direct popular election in municipal government than in the government of the state. The tendency, moreover, is toward still further decreasing the length of the ballot by additions to the appointing power of the mayor, the commission, or the city manager. In an increasing number of cities it has become evident that popular election is not the best means to choose officers who, as far as their municipal functions are concerned, are very frequently engaged in the management or administration of technical or business departments.

Preferential voting

The system of preferential voting has already been described.² It has been used in a modified form at the primary elections of several states, but nowhere in the regular state elections. More than forty cities, however, have adopted it.³ The advantage of the system is fourfold: it insures election by the majority, thereby preventing what has been proved so unfortunate—a minority election resulting from the multiplicity of candidates; it avoids the trouble and expense of a second election where the law requires a majority for choice; it enables the voter to express his entire opinion and not simply his first choice; it still further weakens the power of the organization or forces the latter to select better candidates. It would seem to be admirably adapted to municipal elections.

Proportional representation

Proportional representation should be sharply distinguished from preferential voting. As has been said, preferential voting insures the choice of the majority. Proportional representation

¹ See pages 95-99.

² See page 101.

³ See *Bulletin No. 27* in *Bulletins for the Massachusetts Constitutional Convention*, Vol. II, pp. 307-310. Page 313 gives a list of the cities which have adopted it.

is based on the principle "that each political party or 'each considerable party or group of opinion' shall be entitled in all representative bodies to a number of representatives proportionate to the number of its voting members."¹ The workings of this system have already been described.² It remains only to discuss its adaptation to municipal affairs. As already pointed out, it is used in no state and in only two cities of any considerable size—Ashtabula, Ohio, and Kalamazoo, Michigan. Proportional representation obviously cannot apply to the election of municipal officers. For these some system of preferential voting is desirable. The tendency is to decrease the number of directly elected officers and to vest more power in the council or commission. Could proportional representation be tried in the election of councilors with advantage? In both Ashtabula and Kalamazoo, where proportional representation has been tried, the election worked according to the theory, and the different groups of the electorate gained their proportional representation in the municipal council.³ It may be questioned, however, whether a council made up of members chosen to represent racial, religious, and social groups is best adapted to administer the affairs of a city. Race divisions are too apt to appear in municipal politics, and shades of opinion do not always coincide with these racial divisions.

MUNICIPAL PARTIES

The necessity for the part played by political parties in the states has already been described.⁴ These same duties and the same necessity exist in cities. The municipal government cannot be carried on without political action, and in all but the very smallest cities this political action must be taken

Political parties in municipalities

¹See *Bulletin No. 28* in *Bulletins for the Massachusetts Constitutional Convention*, Vol. II, pp. 325-334.

²See pages 102-104.

³See "Kalamazoo Tries Proportional Representation," in *National Municipal Review*, Vol. VII, pp. 339-348; also W. E. Boynton, "Proportional Representation in Ashtabula," in *National Municipal Review*, Vol. VI, pp. 87-90.

⁴See pages 46-48.

through organized groups, or political parties. The organization of political parties with their rings and bosses, their methods of raising money, their legitimate and illegitimate expenditures, and their all-pervasive influence, has also been described.¹ In fact, the most perfect examples of party organization are found in the cities. The questions for discussion in this section deal not so much with the general problem of parties and party organizations as with the identification of municipal and state parties and the possibilities and methods of separating them,

Should
municipal
parties and
state parties
be identical?

The power of the sovereign state of the United States is distributed between the national and state governments. So, within the states, the functions of state government are divided between the state itself and the cities. In order to insure the harmonious working-out of any policy and its faithful administration, it is necessary for the group favoring that policy to dominate both state and municipal governments. The easiest method of accomplishing this is by means of a political party which shall be identical in the state legislature and in the city councils. On the other hand, it is entirely obvious that there are different questions to be solved by national, state, and municipal governments. Sometimes these questions conflict; hence a single or identical party fails to give satisfaction. Moreover, sad experience has shown that the interests of the cities are too often treated as the spoils of the parties successful in state affairs, and municipal home rule was designed to free the city from too complete a subordination to the state. But where identical parties and party organizations control both the state and municipal elections, the promises of home rule are often illusive. Three methods have been tried in order to meet these evils:²

(1) Abolition
of parties

The abolition of parties has been attempted in those cities which have adopted nomination by the nonpartisan primary or by petition and which have removed from the ballot all party designations. Little can be said in favor of such radical action. At their best, parties and party organizations are excellent

¹ See pages 56-60.

² See W. B. Munro, *The Government of American Cities*, pp. 155-161.

agents for the precipitation and expression of the popular will; at their worst, party organizations and political parties are what the electorate allows them to become. The remedy or reform is always in the hands of the voters. In municipal politics the evil lies not so much in the existence of parties for formulating views and selecting candidates for office as in the subordination of the municipal to the national and state parties.

At the other extreme is the effort to create strictly municipal parties. These parties endeavor to formulate a policy of their own, to nominate their own candidates and, if successful, to administer the affairs of the city according to their principles. They aim to be genuine political parties, with the usual type of party organization, and they try to fulfill all the functions of a regular political party. It is obvious that such parties can be organized only in the largest cities, and even there the difficulties are great. Party organization is expensive and is the growth of time and tradition. Groups must be trained to act together and acquire a loyalty to a definite ideal which seldom exists in purely municipal affairs. Important as are the operations of municipal government, and vital as they are to the well-being of the citizens, they seldom arouse that passionate attachment which is the characteristic of national and state parties. It is true that in New York the Citizens' Union in 1896 and in 1917 attempted to run its candidate in opposition to those of the Democratic and Republican parties, but in both instances it was unsuccessful, although in the former year it polled more than 150,000 votes. In London, where there are nominally municipal parties, the division is largely along the lines of the national parties.¹ The municipal field seems narrow compared with the national. The most likely time for the success in the formation of a purely municipal party is after the domination of one of the state parties by a corrupt political organization. At such a time a purely municipal party may be organized in order to oust the former organization. It rarely happens, however, that strictly municipal

(2) Municipal parties

¹See W. B. Munro, *The Government of European Cities*, pp. 346-347, and A. L. Lowell, *The Government of England*, Vol. II, p. 151.

parties have long lives. They may be effective in producing a party revolution, but they are apt to disintegrate and break up when faced with the continued problems of administering the government.

- (3) **Fusion** A more successful plan of combating the evils of state domination of parties is by "fusion." This is an attempt to get one or both of the state parties to adopt in their platform the program desired by the particular group in the city. A fusion is brought about between one of the regular parties and a group (or perhaps a bipartisan group) of insurgents, who may force the leaders of one party to adopt their program and to give to them a share of the candidates. This method has been tried with success in many cities. A "citizens' ticket," a "citizens' party," or, in 1901 and 1914, The Citizens' Union in New York have been successful as the result of persuading one of the state parties to accept their program. This method, however, is based upon the supposition that there are a sufficient number of independent voters to desert their regular parties and vote for such fusion candidates and that there is a political party willing to forego the advantages of a straight party platform, candidate, and victory.

THE INITIATIVE, REFERENDUM, AND RECALL

Direct
legislation

The devices for direct legislation have already been fully discussed in dealing with state government.¹ It should be remembered that such direct action was first attempted in cities and towns rather than in states. Except in so far as the ratification of state constitutions is concerned, from a very early time the cities have been asked to express their approval or disapproval of the charters framed by the legislature. Moreover, many laws have been submitted to the cities in order to determine their local application, particularly with regard to the control of the liquor traffic. This type of direct legislation does not involve the decision regarding general law or the adoption of a particular measure, but concerns rather the application of a law which has been discussed, framed, and

¹See Chapter VI.

adopted by the legislature. The true referendum has also been used by cities on the question of incurring a debt or of the extension of the debt limit, and even of granting certain franchises. The adoption of the home-rule principle, moreover, as applied in Ohio and Illinois, required a popular referendum on all special laws applicable to the city; but the greatest acceleration of this principle came from the use of the commission form of government, in which there is a complete identification of the legislative and executive function in municipal affairs, thereby breaking down one of the most cherished checks and balances in the American system of government. The commissions were extremely small, and it was therefore felt that too much power was put in the hands of a small group. To meet this criticism the machinery of direct legislation has been quite generally extended to the cities which have adopted this plan.¹

In the cities of the Far West direct legislation has been freely used, perhaps not always wisely, but with considerable satisfaction. Moreover, it is significant that in the optional-charter system adopted by Massachusetts the initiative and referendum were provided before the constitutional amendment allowed it to be used for state issues. In fairness, however, it may be said that as yet few cities in Massachusetts have adopted any of the optional charters. Of the hundred or more questions which have been submitted during the past years to the voters of American cities, a large proportion deals with proposed changes of municipal government or with franchises.²

The same arguments for and against the referendum in municipal affairs might be cited as have been discussed in their use in state affairs. There is this difference: municipal electorates, while not so homogeneous as the state electorates, have a certain homogeneity of interest; that is, a referendum applied to the state at large touches both rural and urban populations, whose problems may be very different. Applied to the city, the referendum affects but one type of population,

Extent
to which
direct
legislation
is used

Effect
of the ini-
tiative and
referendum

¹This is the so-called Des Moines plan, also adopted in 1907 by the legislature of Ohio (see page 439).

²See W. B. Munro, *The Government of European Cities*, p. 330.

the urban, which presumably is more vitally interested in what concerns it alone than in measures which are not so immediately important to it.

The recall

The recall as a means of direct control of government has already been described, and the arguments for and against it have been presented.¹ It should be remembered that the recall has been used chiefly in cities,—seldom has there been the recall of a state officer. In the past decade it has been invoked successfully about eight times, but its use has been threatened more frequently. In the few cases in which it has been employed, it has served to remove municipal officials who were not satisfactory to the voters and has been successfully invoked in states as diverse as California, Texas, and Massachusetts.

Effect of the
newer forms
of city gov-
ernment

Whatever may be the theoretical and practical arguments against direct legislation and the recall, the adoption of the commission and city-manager forms of government has increased the demand for immediate popular control of municipal officials and policy. This is not to be wondered at, since these types of government concentrate wide powers in the hands of a few men. The experience with the traditional working of the electoral system and the operation of parties is not such that the voters are yet ready to intrust their elected officers entirely and completely with these new powers. Moreover, the tendency to increase the length of terms of councils and officials makes it seem desirable to give the voters an opportunity to remedy the errors of election which have been disclosed in administration. Whether these arguments are theoretically valid is not the question. The possibility of using direct legislation and the recall has been the price which has been paid for the newer forms of city government. It is to be hoped that the increased responsibility and power will result in the choice of councils and officials which will make the use of these agencies unnecessary.

¹ See pages 126-128.

CHAPTER XXIII

TYPES OF MUNICIPAL ORGANIZATION—THE MAYOR-AND-COUNCIL TYPE

At present there are three distinct varieties of municipal government in operation in the United States. The oldest and by far the most common is the mayor-and-council type. Originally all the municipalities in the United States were governed by some variety of this type of organization. At the end of the nineteenth century, however, the attempt to eradicate some of the most serious evils in municipal government led to the adoption of an entirely different form of municipal organization. This was the commission type of government, which was adopted first by the city of Galveston in 1901. Many benefits resulted from this change of form, but it was realized that there were certain inconsistencies in the plan, and there followed still another type of organization, the city-manager type, which has been put into operation with extraordinary success in many of the small and middle-sized cities of the country.

Varieties of
municipal
organization

THE CITY COUNCIL

The earliest American cities adopted the English type of government. In this the council was the central organ.¹ The government of the colonial borough, as has been pointed out, was vested in a council chosen directly by the voters. This council in turn elected a certain number of aldermen, usually six or eight, as well as the city officials. The mayor, the aldermen, and the council sat as one body, framed the ordinances,

History
of the city
council
Borough
councils in
the colonies

¹See W. B. Munro, *The Government of American Cities*, chap. viii, with references. Also J. A. Fairlie, *Municipal Administration*, chap. xvii, and Goodnow and Bates, *Municipal Government*, chap. ix, with additional references.

spent the city taxes, and attended to the small administrative duties which were then performed by the city. The adoption of the first state constitutions, and more particularly of the Federal Constitution, influenced the framework of municipal government. Following the federal analogy, many of the city councils became bicameral; aldermen and councilors alike were chosen by popular vote; the mayor was also popularly elected and, like the president of the United States, was given the veto power. As the cities undertook more and fresh administrative functions, these were performed by committees of the council. About the middle of the nineteenth century the city council was the central and dominating factor in municipal government. It was the city legislature which, by its ordinance power, determined the activities of the city, and through its committees it also actually performed or supervised the increasing administrative functions.

Decline
of the city
council

From 1850 on the importance of the city council has steadily declined. In the first place, the character and ability of the members of city councils everywhere has seemed to deteriorate. The committees had too much work to do and were ill fitted to perform the work they attempted. Partisanship and the spoils system diminished the little efficiency possessed by the councils. Appeals made to the state authorities for relief were answered by reducing the administrative powers of the city council. The functions which it had attempted to exercise were taken away and given to the mayor or to officials or to boards chosen by popular vote, or, in some instances, to state-appointed authorities. The result was that during the last half of the nineteenth century the city council fell from its dominating position to that of a subordinate legislative authority whose chief duty was to pass local by-laws and make appropriations. The reaction against state interference and the demand for home rule did not tend to restore the city council to its former position. On the contrary, the powers of the mayor have steadily grown at the expense of the city council, and if functions which were at one time exercised by state-appointed officials were returned to the city, they were returned to boards or officials appointed by the mayor.

It is impossible to generalize about the organization of the city councils. Not only does the practice vary in the different states, but within the same state different types of organizations are found. Originally the majority of the cities, following the federal analogy, were governed by a bicameral council. The movement has been steadily away from this, until today less than a third of the cities have that form of government. Of the ten largest cities of the United States, only Baltimore retains the bicameral system.

Organiza-
tion of the
city council

The chief advantage claimed for the bicameral system is that one chamber acts as a check upon the other and prevents hasty or ill-considered legislation. Experience does not bear out this theoretical claim; since both chambers represent practically the same class of voters and often the same territorial unit there is little difference between them. Quite generally, too, the same political party controls both chambers, and hence the political check of divergent parties is ineffective. As a rule the only difference is that through the longer terms of the upper chamber a little more independence of popular opinion may be assumed, although even this is not usually found true. The bicameral system has not served its purpose in preventing hasty legislation, but it has sometimes been effectually used in causing delay and in extorting compromises.

Advantages
and disad-
vantages
of the city
bicameral
system

When the city council is bicameral the upper or smaller body is usually known as the board of aldermen and the lower or larger body as the common council. When the council consists of a single body it is commonly designated as the city council, although in some cities it is called the board of aldermen. The size of the council varies greatly. In New York and Chicago the numbers are 73 and 70, respectively; the Boston council consists of but 9 members; and San Francisco has a council of 18. The terms for the members are always short. In some cities where the bicameral system exists the members of the upper council serve for four years and the members of the lower for two. In general, the council members are chosen for either two or four years (the shorter term being the more common), while in New England annual elections are still the rule.

Description
of the city
council :
(1) Name

(2) Size

(3) Terms

(4) The members

Almost everywhere any qualified voter may become a candidate for the city council. In a few exceptional cities there are special qualifications, but no city requires a special property qualification. Membership in the council is regarded as the lowest rung of the political ladder, and men without experience and often with little ability succeed in getting themselves elected to this position. They are ordinarily loyal party members, with inconsiderable business interests. An investigation of the former common council in Boston showed that the total sum which the members paid for taxes did not equal the annual cost of a single city laborer.¹ In some cities men of such caliber furnish tempting opportunities for corruption, but as a rule the American municipal government as evidenced by the city council is not to be condemned so much for its corruption as for its stupidity and inefficiency.

(5) Salaries

Most cities pay the members of the city council. The salaries vary from a few hundred dollars to the five thousand a year paid in Philadelphia. A great many cities, however, pay nothing at all. It cannot be said that payment improves the caliber of council members, and some councilors are drawing salaries from the city which they could not obtain from private employers. Where there are no salaries private interests often serve as an excuse for neglected city service and not infrequently lead the councilors to attempt to secure compensation by roundabout and sometimes discreditable methods.

(6) Methods of choice

Members of city councils are elected in three ways—by wards, at large, or by a combination of both. Election by wards is most common. It is almost invariably followed for the lower chamber of a bicameral council and quite generally used for a single chamber. Boston and San Francisco are exceptions among the large cities, and choose their councilmen on a general ticket.

Advantages and disadvantages of election by wards

The chief advantage claimed for the election of councilmen by wards is that all parts and classes in the city may be represented. It is felt that each section of the city is entitled to a representative on the council who shall be able to reflect the

¹W. B. Munro, *The Government of American Cities*, p. 180. In one New England city during one administration not a single member of either board paid anything but the poll tax.

local ideas and sentiments. Selection by wards, moreover, prevents all the council from coming from one section of the city, and for the most part it is successful in producing a bipartisan body. On the other hand, experience has shown that election by wards tends to subject the councilmen to the control of the local ward organization. The phrase "a ward politician" is one of opprobrium, and unfortunately ward politicians have too frequently found their way into the city councils. Moreover, anything which is good for a single ward of a city usually is for the best interests of the entire city. Ward election too frequently has resulted in council members overlooking the best interests of the whole city and concentrating their efforts on obtaining advantages for their own ward.

Election on a general ticket has many theoretical advantages. In the days when the candidates were nominated by the convention it was possible to distribute the nominations among the various wards or districts of the city, and thus to prevent any local organization from foisting on the city an improper candidate. However, with the modern movement of nominations by petition or primaries, these checks are not so efficacious. Election on the general ticket is to be defended upon the theory that the entire city is interested in the character of each and every one of the council.

A combination of the two systems has been tried in some cities. The council members are nominated by wards and chosen on a general ticket. This vests the final choice of the council in the city at large and sometimes forces the ward organization to nominate as candidates men who would be acceptable not simply to their ward but to the city as a whole. In small cities there are theoretical advantages for this method, but in larger ones the strength of the political parties is so great that the dominant party in the city will almost invariably choose without hesitation the candidates nominated by the local ward organizations of the party.

There is a great deal of similarity in the organization and procedure of the city councils throughout the United States.¹

¹See Eugene McQuillin, *Law of Municipal Corporations*, Vol. II, chap. xiii.

Organiza-
tion and
procedure
of municipal
councils

In a few cities the mayor is the presiding officer of the city council; in a few others the mayor is the presiding officer of the upper chamber or board of aldermen; in a very few—New York, for example—the president of the board of aldermen is chosen by popular vote; elsewhere the presiding officer of the city council is chosen by that body itself. This is ordinarily done as the result of a caucus of the newly elected members and, where party discipline is effective, occurs at the first meeting. Cases are not wanting, however, where the organization of the council has been delayed through the inability of its members to agree upon a presiding officer. The usual term of the presiding officer is a single year, although in many instances he serves for the life of the council. City councils frame their rules for procedure, and it is customary to adopt the rules of the previous year. In some cases, however, provisions for procedure, particularly with regard to making appropriations and granting franchises, are embodied in the city charter. Rules which the council adopts may be and frequently are suspended, either by unanimous consent or by a two-thirds vote of the council. Hence, little idea of the actual working of the council can be gathered from a study of the rules; for example, the requirement that every order shall be given a reading at each of two meetings of the council is very often suspended, and important measures are put through at a single meeting with only a brief opportunity for discussion.

Council
committees

The committees of the council are the real working elements in it. In large cities these committees may number thirty or forty and vary in importance from the committees in charge of the highways, finance, and lighting to that in charge of the graves of soldiers. Probably not more than half of them are of vital importance and many, though charged with important matters, have merely nominal functions, as, for example, the committees on statistics or the sinking funds. Where the city council is a bicameral body joint committees are chosen consisting of members from each body. Along with these joint committees, each chamber may choose committees of its own.

Method of
appointment

Council committees are generally appointed by the presiding officer. Since there is great desire to serve on important

committees, the presiding officer often pays his election obligations by committee appointments. Thus it may happen that important committees are composed not of men specially fitted for the work they are called upon to perform, but of men possessing political influence. Since, moreover, the terms of the councilmen are not long and the term of the presiding officer often still shorter, the composition of the important committees is subject to frequent changes. This is in direct contrast to the custom in England, where the tenure of service in the council is long and the service of committees is not infrequently continuous. Thus, in Glasgow it was found that seven committeemen had served for fifteen years on their respective committees—two for eighteen years, two for twenty, three for twenty-one, and three for twenty-five years.¹ This long service upon committees tends to give the members an expert knowledge of their duties which is impossible under the American system. As a result, in England the recommendations of the standing committees are practically always followed, while in the United States so little confidence is placed in these recommendations that they are frequently subject to amendment or rejection.

The powers of the city councils in the United States vary so much from state to state and even between cities in the same state that it is impossible to make a comprehensive summary. These powers are derived, as has been seen, from the charter granted to the city, which charter may be either a general or a special charter framed for the individual community. The charter powers themselves are subject to frequent amendment as a result of special legislation, either asked for by the city or superimposed on the particular city by the legislature. Finally, moreover, certain general state laws apply to all cities alike. In general, however, while the powers of the city councils have been steadily declining, such as remain may perhaps be classified as legislative and administrative.

The city council may legislate on such matters dealing with the structure and form of the city government as are not covered by the city charter or general statutes, but this field is not large, for the attempt is often made by the state authorities

Powers of
the city
council:

(1) Legisla-
tive powers
(a) General
powers

¹ See Goodnow and Bates, *Municipal Government*, p. 216.

to cover these matters thoroughly. The council, however, by ordinance, may in certain instances provide for the selection of minor officials and fix the compensation both of these and, in many instances, of the officials prescribed by the charter.

(b) Police
power

The city council exercises a limited police power through the passage of ordinances. They may make rules concerning traffic and the establishment of fire limits, building laws, sanitary, health, and plumbing regulations, and, in a narrower field dealing with the morals of the citizens, such regulations as those concerning dance halls, the curfew, parks, and playgrounds. In this field, however, the powers of the city council are being constantly diminished. In the first place, more and more of these matters are regulated by general state laws, and, second, the power to make them is being taken from the city government and given to administrative boards—thus the regulation of traffic may be given to the street commissioners or to the police, the sanitary or health regulations to the board of health, and so on.

(c) Finan-
cial power

[Appropriations]

The financial power of the city council is still large. Very often the city council determines the tax rate, although it does not decide what property shall be taxed. Even this power is limited by the power of the council to make appropriations. Theoretically, the city council makes the appropriations; actually, however, there are many restrictions upon this power. In some cities the appropriations are gathered together in a budget, which is prepared either by the mayor or by some special committee. The city council in many cases is limited in its consideration of the budget to decreasing the appropriations asked for. It may not insert new appropriations nor increase those already called for. In some cities, moreover, the power to decrease the budget is subject to limitations: in New York City changes can be made against the approval of the mayor only by a three-fourths vote. However, in the majority of cities the city council is allowed both to increase and to decrease the mayor's estimates and thus, necessarily through the making of the appropriations, to determine the tax rate.¹ The city council is the decisive factor in borrowing

¹ See page 541; also W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 446-453.

money. All loans, whether temporary or permanent, have to be passed upon by the council. It is true that this power is restricted by state statutes and that the city cannot borrow money for purposes which are forbidden or not specifically granted to it. In most states, moreover, there are debt limits beyond which the city council may not go. Furthermore, many states give to certain municipal bodies the right to issue bonds for special purposes; thus the sewer commissioners, water boards, and park commissioners are frequently given the right to issue bonds without consulting the city council. In spite of these limitations the power of the city council in finance is large. No appropriations can be made without its vote, and as a rule no debt can be incurred without its consent. [Loans]

The city councils originally had unlimited power to grant franchises, but this has proved such a fertile field of corruption that as a rule it is now limited, particularly in the case of franchises to street railroads for the use of the streets and highways. In some cities a popular referendum is required, and in others it may be invoked by petition. Moreover, the power of the city government is limited by constitutional and statutory provisions which prevent the grant of permanent franchises and not infrequently specify the terms of a franchise. In the field of the public utilities which are actually operated by the city, such as the water and sewer systems and, in some cases, gas and electricity, the city council sometimes possesses the power to regulate such matters by ordinance. For the most part, however, the actual control of these services is under some administrative board which operates more or less independently of the city council. (d) Franchises

The city councils exercise a rather wide miscellaneous legislative power. Examples of this are found in the location of public buildings and parks and the utilization of the permissive powers granted to the city by the charter. In general the legislative powers of the city councils are decreasing in importance; more and more functions are taken over by state authorities or exercised by administrative boards. Nevertheless the ordinances of any city constitute a bulky and bewildering collection. They are constantly being revised and amended. (e) Miscellaneous

and are seldom completely understood except by the officers charged with their execution.

(2) Admin-
istrative
powers

Theoretically the city council ought not to exercise administrative powers. Consistent with the federal analogy, which had been the model of the American city government, the administrative functions should be exercised by the city executive. Nevertheless many city councils exercise a good deal of administrative power by charter and, through the play of politics, wield considerably more. Many cities, both large and small, still give to the city council the appointment of certain officers; in more the nominations of the mayor require the confirmation of the city council or, in the bicameral system, of the upper board. Wherever the power of appointment exists the city council exercises a certain control over the administration and certain administrative powers as well. In some instances the city council has the right to approve all contracts, and most city councils may require reports from the administrative departments and may investigate them. This enumeration of the legal administrative powers of the council gives an inadequate idea of the position it actually plays in municipal administration. Although its powers in administration may be limited, the influence of the members of the council is great. Since all departments require appropriations and are dependent for one thing or another upon the activities of the council, the individual members rather often acquire great influence in the administrative departments in return for their support. The patronage of some departments is put at the disposal of groups of councilmen, and the departments themselves may be operated not for the efficiency of the service but to further the political fortunes of individual councilors.

Influence of
the city
council

In most American cities the city council legally has a minor position, but practically, through the operation of politics, its influence is far-reaching. This influence, however, has not made for efficiency or good government. Consequently the tendency since the middle of the nineteenth century has been to decrease the powers of the city council and to extend those of the executive. Only in the commission form of government,

where the principle of separation of powers has been ignored, is there any tendency toward increasing the legal position and influence of the council.

THE MAYOR

The position occupied by the mayor in American municipal administration is unique.¹ It is the result of development and of the attempt to remedy the evils and inefficient administration under the councilor system. During the colonial period the mayor, like his English predecessor, was merely the presiding officer of the council; he was chosen by the council and, along with the aldermen, met with the council; he had no veto power and few if any administrative powers and he was in no sense of the word an independent administrative officer.² The adoption of the Federal Constitution and the revision of the early state constitutions, with the express or implied separation of powers, led to a change in the position of the mayor. As has been shown, the city charters of the late eighteenth and early nineteenth centuries provide for a mayor chosen by popular vote rather than by the city council.³ In some charters the mayor was given certain powers of appointment, subject, however, to the confirmation of the aldermen,⁴ but in no instance was he given the veto power. Thus, until the middle of the nineteenth century the mayor was rather the equal of the council and not the dominating factor in city government.

Development
of the office
of mayor

¹The best brief recent account of the office of mayor in the United States is given by W. B. Munro, *The Government of American Cities* (3d ed.), chap. ix. Other brief accounts are by Goodnow and Bates, *Municipal Administration*, chap. ix, and J. A. Fairlie, *Municipal Administration*, chap. xix. A detailed study of the office of mayor is contained in "The American Municipal Executive," by R. M. Story, *University of Illinois Studies in the Social Sciences*, Vol. VII, No. 3.

²For the position of the mayor in colonial times see page 360; also J. A. Fairlie, *Essays in Municipal Administration*, pp. 68-69, and R. M. Story, "The American Municipal Executive," *University of Illinois Studies in the Social Sciences*, Vol. VIII, No. 3, pp. 21-23.

³In Baltimore in 1796 the federal analogy was pushed to the extreme and the mayor was chosen by a miniature electoral college.

⁴Boston, 1796.

Since 1850 the council has lost power. The reasons for this have already been discussed.¹ Ultimately almost all of the powers which the council lost were transferred to the mayor, although this transfer did not take place immediately. Some of the powers which the council had failed to exercise efficiently were transferred directly to state authorities; for example, the police administration of Baltimore in 1860 and of Chicago in 1861. In 1865 the state took over the control of fire protection, public health, and licensing in New York City and vested them in state boards. As has been seen, a reaction against state administration soon set in, and for the most part the administrative powers which were exercised by state officials were transferred to officials or boards appointed by the mayor. In some cases the powers of the council were given to popularly elected officials. It was soon found, however, that popular election was not a satisfactory method of choosing administrative experts, and in a great many cities the mayor was the recipient of the power to appoint these subordinate administrators. Toward the end of the nineteenth century the power of the mayor increased with great rapidity. Some of the largest cities—New York² for example—took away from the council the power of confirming the nominations of the mayor, thus making him practically independent in administration. The mayor also gained great powers in finance. In many cities he was given the right to frame a budget which could not be increased by the action of the council and, in some cities, could not be decreased except by an extraordinary majority. Many municipalities accorded to the mayor more and more power in awarding contracts. His term was lengthened and his salary increased. Thus, in some cities the mayor became the dominant factor in municipal government. But this development was by no means uniform throughout the United States: in many cities, and those not the smallest, the council was still very powerful; in others—perhaps a majority of the middle-sized ones—the council and the mayor shared the responsibility and functions of government. Still the tendency at the end of

¹See pages 367-369, 370.

²This movement began in Brooklyn in 1882.

the nineteenth century was toward a "strong" mayor, able to dominate all features of city government. This tendency, however, was sharply checked by the development of the newer types of municipal government—the mayor-and-commission and the city-manager plan. It is true that neither of these forms has been adopted by many of the cities of the first rank, and in them the "strong" mayor is still the rule. Nevertheless, in an increasing number of small and middle-sized cities either the commission or the city-manager plan has been adopted, thus slightly checking the tendency toward the usual type of a dominant city executive.

In practically all American cities the mayor is chosen by direct popular vote. Candidates for office are nominated and elected according to the systems described for the selection of other elective officials.¹ A few cities, however, use the system of nonpartisan primaries for the nomination of the mayor, and some—for example, Boston—require that the mayor shall be nominated by petition. As a rule the election is by plurality vote; a very few cities require a majority, and some have adopted the system of preferential voting.² Method of election

The usual term of office for the mayor is two years, although this rule is by no means uniform either in a single state or throughout the country. In New England, except for Boston, the greater number of cities elect their mayors annually. Some of the largest cities in the United States have adopted a four-year term.³ A few municipalities give the mayor a three-year term, and still fewer a five-year term. The general tendency is toward increasing his term of office. Practically everywhere the mayor is eligible for immediate reelection,⁴ and where the terms are short he has almost a prescriptive right to renomination. In the larger cities the executive functions of the mayor are so complicated that the incumbents are likely to spend the first year or more in acquainting themselves with their duties Term

¹ See Chapter V.

² See pages 101-102, 402.

³ Baltimore, Boston, Chicago, New York, Philadelphia, and St. Louis.

⁴ In Boston and Philadelphia, where the term is four years, the mayor is not eligible for immediate reelection.

and in initiating their policies. Where the term is two years the time is so short that the executives have little opportunity to show the voters the results of their policy. Consequently the voters are generally asked to give the mayor another term in order that he may carry out and complete his plans. Thus, during the second year of a two-year term the mayor is not infrequently busy planning for his reelection to the detriment of his administration. A four-year term gives a mayor the chance not only to initiate but to bring his policies to fruition; it enables him to correct some of the inevitable mistakes he may make during his first year and to come before the voters for reelection with a record of accomplishment for good or evil.¹ It is sometimes held that a four-year term is a severe penalty for an unwise selection; that the voters may have been stampeded in their choice. It has sometimes happened that skillfully manipulated public opinion has denied reelection to an excellent official and placed in office for a long term an inexperienced and inefficient administrator. This danger may be avoided in various ways: in New York State the mayors of some cities may be removed by the governor as the result of charges and a hearing; in other states some of the various systems of recall which have been described are in effect.² On the whole it would seem better to run the risk of making an unfortunate choice for a long term, subject to the safeguards already mentioned, than to compel every mayor to stand for reelection at the end of short terms.

The one universal qualification is that the mayor must be a qualified voter. Additional qualifications, however, are imposed in some cities. Baltimore, San Francisco, and St. Louis require a five years' residence in the city; some cities set a minimum age-limit, and a few require a property qualification.

Qualifications

¹In England the term of the mayor is one year; in France, four years; in Italy, three years; in Germany the general rule is twelve years, although in some cases it is for life. See Goodnow and Bates, *Municipal Administration*, p. 232. It should be remembered that in England the mayor has little administrative power, this being exercised by the committees of the council, while in Germany the burgomaster is a professional administrator charged with few political duties; hence the comparative length of terms is of little importance.

²See pages 126-128.

But no city exacts any professional qualifications or past experience in administration in municipal affairs.¹

In nearly all the cities in the United States except the very smallest the mayor is paid an annual salary. This stipend may be fixed by charter, but is usually determined by city ordinance, with the provision that the salary may not be increased during the term of office of any incumbent. The salaries paid the American mayors vary from \$1000 or less in the smaller cities to \$18,000 in Chicago.² As compared with the English cities (where the mayors receive no salaries but are given allowances for actual expenses) and the German cities (where the burgomasters are considered to be well paid), the American cities are generous, but this generosity neither insures the same type of executive nor is adequate for the expenses the American mayor incurs. Whatever salary is paid to the mayor the demands upon him are usually greater than his stipend. Some of these demands, like the entertainment of guests of the city, should be met by the city. The majority of his expenses, however, are connected with the political rather than with the legally required duties of his office. In most cities the mayor is a strong organization man and wins his election through the activity of the organization. He consequently finds it to his advantage, if he is not actually assessed, to contribute largely to the funds of the party.³

In order to win and maintain popularity the mayor must be generous in his subscriptions to various organizations and in his contributions to different societies. In addition he finds it advantageous to acquire the reputation of being charitable and ready to extend aid in needy cases. These demands on him

¹W. B. Munro, *The Government of American Cities*, p. 215. This is not strictly the case in the mayor-commissioner under the commission form of government in some cities, where, by a provision of the system, professional qualities are sought. See pages 436-438.

²New York pays \$15,000; Philadelphia, \$12,000; Boston, \$10,000; San Francisco, \$6000.

³Where there is an attempt to avoid party organizations the candidates are obliged to contribute more generously. Thus the published returns of a Boston election showed that the two leading candidates expended about \$150,000 in addition to what was contributed by their supporters. See W. B. Munro, *The Government of American Cities*, p. 219.

frequently greatly exceed his salary. It is not to be supposed that this financial sacrifice on the part of most mayors is a permanent one. In a few cases, perhaps, the mayor may recoup himself in corrupt ways, but more often he seeks compensation through the prominence and advertising which his position gives him. As chief executive of a city he becomes well known, and if he is a lawyer he attracts considerable practice. In other fields as well his prominence is an asset. His term of service in a large number of instances results in direct financial profit, not because of corruption or absolutely illegal acts but from a dubious blending of his private business with his official functions.

Character-
istics of
American
mayors

American mayors are rarely professional administrators; in this respect they are in direct contrast to the German burgo-master and to the city manager in the newest form of American municipal government. Mayors in the United States are seldom men of large business experience; in this respect they are in sharp contrast to the English mayors. Nor, like the English mayors, are they men of large means. In fact, great wealth and connections with big business are considered a handicap for the candidacy of any mayor. American mayors are, primarily, politicians; ordinarily, faithful members of the party organization. They have seldom held any other political office; indeed, previous administrative service in either state or municipal affairs is, like wealth, a handicap. Although there are notable exceptions to this, yet experience has shown that previous service generally gives a man a "record." While this record may be good he will have been obliged to offend certain influential politicians who may oppose and thwart his ambition. The American mayoralty is not a stepping-stone to higher political office. There are, it is true, many exceptions to this statement, but as a rule the office of mayor is generally the first and last official position which the incumbent occupies.

In spite of the theory of the separation of departments the mayors of American cities possess certain legislative powers. The first of these—the power to recommend legislation—is generally exercised in two ways. On taking office the mayor

in his inaugural address frequently outlines the program he expects and desires to have put through. Since, in most cases, the mayor and the city council are of the same political party and products of the same political organization, the mayor's inaugural may come to be the program of the party and thus is often favorably acted upon by his party majority in the council. A second way in which the mayor recommends action is by means of special messages to the council. These messages may be delivered in the form of a personal address or as a written communication. They are effective in proportion to the mayor's influence upon the council. This, in turn, depends upon his standing in the organization and the extent to which the leader controls the councilmen. Where the mayor and council are of opposite parties neither the mayor's inaugural nor his special messages receive much consideration.

Legislative powers of the mayor:
(1) Power to recommend action

The strongest weapon which the mayor has is the right to veto the action of the council. Originally this did not belong to mayors in the United States nor is it possessed by any municipal executive in England or on the Continent. The veto power is a distinctly American institution. According to practically all city charters no ordinance or action of the council becomes binding unless signed by the mayor. The mayor's veto consists in returning to the body in which it originated any ordinance or resolution without his approval. If the majority of the council repasses the ordinance or order in spite of the mayor's objection, it becomes valid without his signature. Most city charters require an extraordinary majority to override the mayor's veto—in general, two thirds; but San Francisco require seven ninths, and in Boston the disapproval of the mayor is final.

(2) Veto power

The executive veto was adopted in the Federal Constitution and in the constitutions of the various states in order to protect the executive from encroachment by the legislature. As such it has been effective. On the whole, it has been used sparingly and wisely in state and national affairs and is almost universally regarded as a safeguard against extravagant or unwise action by legislative bodies. Following the federal analogy, it was carried over to municipal government in the nineteenth

[Merits of the mayor's veto]

century, where it cannot be defended on the same grounds.¹ The legislative functions of the city government are not complete and final in themselves; above and beyond the city is the state legislature, which by law may enact measures for the city or repeal action taken by it. The city executive, moreover, in the last sixty years has not needed protection against the city council, and in fact the mayor has dominated the legislative branch. Whether this be for the advantage or disadvantage of good government the veto has too often been used as an instrument of political juggling. The council has evaded responsibility, trusting to the mayor to veto its act, and the mayor, by refusing to exercise this veto power, has tried to shift the responsibility to the council. Moreover, instances are not wanting in which the mayor has compelled the council to confirm bad appointments through the threat of vetoing a measure in which it was vitally interested. Yet in spite of these criticisms the mayor's veto has often made for economy and prevented foolish and harmful legislation. It is true that under the commission form of government the veto has been abandoned, but government by a commission, as will be seen, presents very different problems from the mayor-and-council type. The commission is both the executive and the legislature. As long as the system of the separation of the executive and legislative departments remains, even in its faulty present form, there seems to be a legitimate place for the veto of the mayor.

(3) Financial powers

In many cities, although perhaps not in most, the mayor initiates appropriations. Originally the finance committee of the city council, as in the English boroughs, prepared the budget. This proved unfortunate in American cities, for the council members attempted to pad the budget for the benefit of their wards and constituencies and had little regard for the wider interests of the city or for economy and sound finance. In many American cities today the mayor is given the sole authority to prepare the budget; that is, to receive the estimates of the various departments and to recommend the amount which the city council shall appropriate to each. In a

¹ For criticism of the mayor's veto power see W. B. Munro, *The Government of American Cities*, pp. 225-226.

large number of these cities the council is prohibited from increasing the suggested amounts or from inserting new appropriations, but it may reduce the amounts recommended.¹ In Boston the mayor has the undivided responsibility of preparing and submitting the budget. The council may reduce or omit any item, but may not increase any suggested appropriation nor insert new ones. In New York the preparation of the budget is vested in a board of estimate and apportionment, which consists of the mayor, the comptroller, the president of the board of aldermen, and the five borough presidents. The board of aldermen, to whom the budget is then submitted, can make no changes except to decrease the appropriations called for, and even these changes are subject to the veto of the mayor, which can be overridden only by a three fourths' vote.²

The Boston plan

The New York plan

The appointing power is one of the most important features of authority of the mayor, and in many cities the most important. In no American city does the mayor's appointing power extend to all the city officials, for some of these are still elected by the city government or by the voters directly. Particularly is this true with regard to the officers intrusted with the administration of finance, like the city treasurer or the comptroller. The great majority of administrative officials, however, obtain their office as the result of nomination or appointment by the mayor. Until the last decades of the nineteenth century confirmation by the city council, or one body of the city council, was necessary in order to consummate the appointment of the mayor. This was only another example of the slavish following of the federal analogy. Beginning with Brooklyn in 1882, the experiment was tried of giving the mayor the absolute power of appointment. This has rapidly spread and has become the custom in many, although not in the majority, of the American cities.

Administrative powers:
(1) Appointing power

The theory of requiring aldermanic confirmation rested not simply on the desire to copy the federal system, but on a genuine fear that the municipal executive could not be trusted to make appointments unchecked by the representatives of the voters. It was felt that aldermanic confirmation would prevent

Merits of aldermanic confirmation

¹See page 541. For fuller treatment see also W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 445-453. ²See page 540.

partisan or bad appointments. Such, however, has not been the case. Aldermanic confirmation has too often been used as an excuse to avoid responsibility. The mayor has claimed that he appointed as good men as the aldermen would confirm, and the aldermen that they were obliged to confirm the mayor's appointees. Moreover, the system has led to trading and log-rolling by which the mayor buys the support of the aldermen with the patronage at his disposal.

The Boston
plan

The amendments to the Boston Charter in 1909 gave to the state civil-service commission the power of passing upon the mayor's appointments. No aldermanic confirmation was required, but the mayor was obliged to certify to the commission that his nominee was a "recognized expert in the work which will devolve upon him" or "a person specially fitted by education, training, or experience to perform the duties" of the office. On receiving such information the commission investigates the mayor's appointee, and unless it is satisfied that the appointee fulfills the conditions the mayor's appointment lapses on the expiration of thirty days and a new nomination must be made. This system is obviously an invasion of the principle of municipal home rule, for it gives to a state-appointed body, which is not under the control of the municipality, the power to reject the nominations of the municipal executive. Nevertheless, in its actual working the system has much to commend it. It must be admitted that a great deal depends upon the liberality with which the commission interprets the words "recognized expert." As it has been applied in the case of Boston, it has restricted the freedom only of the spoilsmen, and a mayor at all interested in appointing even moderately efficient administrators has met with no difficulty. On the whole the Boston plan has much to commend it.¹

Removals
from office

Where officials are appointed by the mayor without the confirmation of the city council or board of aldermen, the mayor as a rule may remove his appointees without assigning cause. In some cities, however, after an officer appointed by the mayor has held office for a certain length of time, he

¹ For a fuller discussion of the Boston plan see W. B. Munro, *The Government of American Cities*, pp. 230-233, 435-436.

may not be removed except as the result of a hearing. But where the mayor's appointment is subject to confirmation by a board of aldermen, the officer may not be removed without the consent of the concurring body. Accordingly the mayor finds himself in such cases merely the nominal director of the administration for which he is held responsible.

The American mayor has a great many miscellaneous powers and functions which vary with the charters of the different cities. As a rule he is intrusted with supervision over all the departments, although where he is not given the power to appoint and remove the department officials this power is of little avail. In some cities he is given the right to receive reports and inspect the accounts of the city officials, but without the power to compel certain actions this right amounts to very little. He may call out the militia in some cities and occasionally may pardon offenders sentenced at the municipal court. In many cities he is a magistrate, and sometimes he actually exercises these judicial functions. He often represents the city at legislative hearings and in some states may express his approval or disapproval of legislation affecting the city.

Miscellaneous powers of the mayor

Today, in cities using the mayor-and-council type of government, the mayor is the dominating factor in the situation. His powers have steadily increased, his duties have multiplied, and his responsibility has become very direct. Whatever failures and inefficiencies are found in municipal governments of the mayor-and-council plan they are not due to lack of power on the part of the mayor. So much authority has been given the mayor in some of our largest cities that he may, as did ex-Mayor Mitchel of New York, institute and carry through extensive municipal reforms and establish an enviable record for efficient municipal administration. In so doing, however, a mayor may be forced to override and ignore the popular and democratic element in the city government. He thus lays himself open to the charge of establishing a one-man power. This may bring about such a change of sentiment that the excellences of his administration—based as it is on the executive power—may be reversed and discarded where an admittedly less efficient but more popular administration would be continued.

Present position of the mayor

CHAPTER XXIV

TYPES OF MUNICIPAL ORGANIZATION—CITY GOVERNMENT BY A COMMISSION

Principles of
the commis-
sion form of
government

City government by a commission rests upon the theory of the fusion of the legislative and administrative functions. In the system of government just described—that of the mayor and council—the principle of the separation of the powers of government was the underlying feature. The influence of the Federal Constitution and the constitutions of the various states in framing the organs of government and in the distribution of their powers was everywhere seen. City government by a commission abandons this theory and analogy and rests upon the principle that in municipal administration there is no need for a division of power or for the checks and balances which are so cunningly devised for the national and state governments. It starts with the assumption that the greater part of the functions of municipal government deals with problems of execution and administration and not with legislation. Briefly, commission government abolishes the legislative organs of the city and vests all the legislative functions in an administrative council or group of heads of administrative departments. Although it is a radical departure from the systems of national and state government, it is an adaptation of the principles and methods of county government.

The application of commission government to cities was the result of a disaster.¹ In September, 1900, a large portion of

¹The material on commission government is copious. Detailed references to this may be found in W. B. Munro's "Bibliography of Municipal Government." There is an excellent discussion of this system in "The Government of American Cities" (3d ed.), chap. vii, by the same author, which gives some of the more recent and important references. Especial attention should be called to *Bulletin No. 12*, "Commission Government in American Cities," in the *Bulletin* for the Massachusetts Constitutional

the city of Galveston, Texas, was destroyed by a tidal wave. Under the old form of government by mayor and council Galveston had not prospered. The debts had rapidly increased, and it was not uncommon to borrow money for current expenses. The tax rate was high, and the citizens got little return for their taxes. It was found almost impossible to borrow money to rehabilitate the city except on rates of high interest, and the governor of the state refused to allow public money to be advanced to a municipality which showed such incapacity in the management of its affairs. In this crisis a group of citizens petitioned the legislature to put the city into what amounted to a receivership. Consequently, on April 19, 1901, the state legislature passed an act abolishing all the existing organs of the city government and vesting their functions in a commission of five men, three of whom should be appointed by the governor and two elected by the citizens. It was held by the Texas courts that this violated the constitutional provisions of self-government, and the legislature in 1903 amended the act by providing that all five commissioners should be elected by the voters. Although the Galveston plan was adopted to meet an emergency, its results were so satisfactory that it was adopted by the city of Houston in 1905. During the next two years no other city followed this example, but in 1907 the legislature of Iowa passed an act allowing any city of more than 25,000 to adopt the commission form of government.¹ The city of Des Moines made use of this plan of government in 1908, and from that time its use has spread until about four hundred cities are operating under this system. Comparatively

Origin of
commission
government

Spread of
the commis-
sion idea

Convention, Vol. I, pp. 451-458. This gives digests of certain typical charters, lists of state acts providing for commission government, and lists of the commission-governed cities. A standard work is E. S. Bradford's "Commission Government in American Cities." The operation of the commission form of government during its first ten years is discussed in the *National Municipal Review*, Vol. I, pp. 372-377, 562-568, by E. S. Bradford and W. B. Munro. The United States Census Bureau in 1916 published the "Comparative Financial Statistics of Cities under Council and Commission Government."

¹Iowa, Laws of 1907, chap. 48, with amendments; Laws of 1909, chap. 64; Laws of 1913, chap. 102. A digest of this law is in the *Bulletins for the Massachusetts Constitutional Convention*, Vol. I, pp. 475-476.

few cities with a population above 200,000 have tried the commission form,¹ but about fourteen cities having a population of from 100,000 to 200,000 have adopted it. These cities are found in all sections of the country, though more are in the South than in any other single section. As Professor Munro has pointed out,² the real problems of municipal government develop generally in cities of over 100,000. Less than twenty such cities have put the commission plan into effect. Accordingly even yet it is too early to determine whether the scheme will satisfy those municipalities in which the problems of government are most acute. The system is most popular in cities having a population of less than 30,000, and there are nearly three hundred such cities distributed among thirty-nine³ states; in all, forty-three states have cities under this type of government.⁴ Although the commission plan of government has been rejected by a number of medium-sized cities,⁵ only a few cities have returned to the former system of mayor and council, after they had once adopted the commission form.

Methods by
which cities
may adopt
the commis-
sion type of
government

The most common way in which cities may obtain commission government is by general law, which allows any city within the state, with the approval of the citizens, to adopt the commission form of government. As a rule, however, general laws exempt the great metropolitan centers and sometimes the very small communities. In four states⁶ the commission form is made obligatory for all cities of certain classes, and in Pennsylvania it is required for all cities except Philadelphia, Pittsburgh, and Scranton. Five states⁷ have adopted optional

¹ New Orleans, 1912; Jersey City, 1913; Portland, Oregon, 1913; St. Paul, 1914; Buffalo, 1916.

² "Ten Years of Commission Government," *National Municipal Review*, Vol. I, pp. 562-568.

³ For tables of cities see Bulletins for the Massachusetts Constitutional Convention, Vol. I, pp. 481 et seq., also current numbers of the *National Municipal Review* and the *American Year Book*.

⁴ The following states have no cities governed by commission: Delaware, Indiana, New Hampshire, Rhode Island, and Vermont.

⁵ Bridgeport, Cambridge, Minneapolis, and Savannah.

⁶ Alabama, Missouri, Pennsylvania, and Utah.

⁷ Massachusetts, New York, North Carolina, Ohio, and Virginia. See page 382.

charter laws under which any city, with certain exceptions, may adopt one of the optional charters provided by the legislature. Among these alternative plans is the commission type of city government. The ordinary method by which the permissive general laws or optional laws are invoked is through a petition signed by 10 to 40 per cent of the voters (the most usual percentage is 25), requesting that the act be submitted at a general or special election. If it is ratified by the majority of voters the new system goes into effect. A third method by which commission government is offered is afforded under the system of home-rule charters. Twelve states have home-rule-charter laws which have been invoked for framing charters for commission government. Of the more important cities which have adopted charters by this means may be mentioned Portland, Oregon, and Spokane, Washington. A fourth method by which commission government is applied to cities is through special charters granted by the legislature. This way is followed where legislatures have failed to adopt the home-rule system, the optional-charter system, or general laws for commission government, and has been invoked in some states where the optional-charter system already exists. Buffalo and Lowell may be mentioned as cities which have by this method become commission-governed.

The central feature of city government by a commission is obviously the commission itself. In this is concentrated all the functions previously exercised by the mayor, city council, and many of the administrative departments. The size of this commission varies from three members to seven. Probably the average size, taking all the cities throughout the country into consideration, would be five. The size of the commission is of vital importance. It should not be so large that it would reproduce some of the evils of the council system; on the other hand, it should be large enough so that the commissioners should not be overworked and that each commissioner might be intrusted with the supervision of a single, homogeneous administrative department, although these departments may properly contain correlated bureaus. For any but the smallest cities five is about the lowest number of departments into which

Description
of the
machinery
of city gov-
ernment by
commission:
(1) The
commission:
(a) Number
of commis-
sioners

the functions of the city may be consolidated. On the other hand, it may be possible to consolidate the functions of even the large cities into not more than six or seven.¹

(b) Method
of election

As a general rule the commissioners are elected at large on a nonpartisan ballot. Nomination is obtained either by petition or by primaries. The former has sometimes resulted in placing many names upon the ballot and thus may bring about the election of a commissioner by a minority of the voters. Nomination by primaries, serving as it does in place of a preliminary election, will eliminate all but the two highest candidates and insure election by a majority of the voters. The use of the primary, however, involves considerable expense and expenditure of energy. Consequently a few cities have adopted the system of preferential voting, and a still smaller number have adopted proportional representation. The working of these modes of voting has already been described.² It should, however, be noticed here that, unless there are three to five vacancies to be filled, a system of proportional representation has little advantage over the ordinary methods. The same criticism does not apply to the use of preferential voting for filling a few vacancies.

(c) Term
of commis-
sioners

The term of commissioners varies from one to six years. In cities of more than 30,000 inhabitants the most common term is either two or four years, only one city having a term of five years and two cities terms of six years.³ In some states⁴ the charter laws provide for the partial renewal of the commission at each election, thus making the commission a continuous body. Under the Iowa law, however, and the so-called Des Moines plan the entire commission is renewed at each election.

(d) Salaries

The salaries paid to the commissioners in cities of more than 30,000 are everywhere higher than those paid to aldermen or councilors. This is as it should be, since a commissioner is expected to give a large part of his time, if not all, to the administration of his department. Salaries vary from \$6000 paid to the commissioners of New Orleans and \$7000 in Buffalo

¹See administration departments, p. 457.

²See pages 101-104.

³The six year term is provided by general law for all cities in Wisconsin.

⁴Alabama, Montana, North Dakota, and South Dakota.

and Birmingham, down to \$1800 in Galveston, \$1200 in Boise, and \$1000 in Waco. Perhaps the most common amount would be between \$1800 and \$2500.

The grouping of the administrative departments under the supervision of the commission is the second fundamental feature of this type of government. The numbers of these departments vary with the number of commissioners, and their designations also are different. A typical arrangement would probably be as follows: (1) department of public affairs (mayor, miscellaneous functions); (2) department of accounts and finance; (3) department of public health and safety (health, police, and fire protection); (4) department of streets and public improvements; (5) department of public property (municipal water and lighting plants, public buildings, etc.). There are several methods for determining how the commissioners shall be assigned to these departments. In most of the cities the Des Moines plan is followed, by which the entire commission is elected without specifying the department which each commissioner is to administer, and the departments are assigned by a vote of the commission. In other cities—and these include cities adopting the charters provided in Arkansas, Louisiana, and Massachusetts—the commissioners are nominated and elected for specific departments. A third method is exemplified by the general charter act of South Carolina, which provides that the mayor shall assign the commissioners to the various departments. There is, however, a provision which allows the council to make rearrangements when necessary. In Portland and St. Paul the mayor may make the assignment and in the former may make reassignments “whenever it appears that the public service will be benefited thereby.”¹ Very grave objections may be raised to the election of a commissioner for a particular department. The tendency will be to nominate and compel the election of a person who is supposed to possess some expert knowledge of the functions of the department for which he is a candidate. As will be seen, this is contrary to the idea of a commission-government. The commissioners are not supposed to be experts to run their

(2) Administrative departments

¹R. M. Story, *The American Municipal Executive*, p. 192 note.

departments, but they are expected to be intelligent executives who are able to see that their departments run. It is more important to obtain a good executive who may be ignorant of the technicalities of his department than it is to elect a presumed expert who lacks executive or administrative ability. On the whole, the apportionment of the departments by the commission itself has worked fairly well, although this method may possibly develop logrolling. The third means—that of appointment by the mayor—is in vogue in so few cities that it is impossible to generalize upon it. It would seem, however, to be a reversal to the mayoralty type, which the commission form is attempting to avoid.

(3) The
mayor

In all commission-governed cities there is a presiding officer known as the mayor. In most cities he is elected for this particular office and is so designated on the ballot, but in a few he is the commissioner who receives the highest number of votes. The laws of Nebraska and New Jersey, however, provide that the mayor shall be chosen by the majority vote of the commission. In all cases the mayor receives a somewhat higher salary than is paid to the other commissioners. This difference may be merely nominal or it may be several times the salary of the commissioners.¹

[Position
and influ-
ence of the
mayor]

According to the original plan for commission government the mayor was little more than the presiding officer, and as mayor had no more real power than any of the other commissioners, although he might be assigned to one of the most important, if not the most important, departments of administration. According to the original plan he presided at the meetings of the commission, represented the city in a ceremonial capacity, and as commissioner had the right to vote on any matter before the commission. He did not, however, possess the veto or the power of appointment, which were the two strongest elements of the mayor's influence under the orthodox system of city government. The original plan has

¹Marshall, Texas, pays its commissioners \$300 and its mayor \$1800; Waco, Texas, pays its commissioners \$1000 and its mayor \$2400. These cases are abnormal. Usually the mayor seldom receives more than four fifths more salary than the commissioners.

been radically altered in the spread of commission government.¹ It has already been noticed that the mayor receives in practically every instance a higher salary than do the commissioners. Likewise, attention has been called to the very important power exercised by the mayor in some cities—that of assigning the commissioners to the various administrative departments. This tends to make the mayor very much more important than anyone else or even than all the commissioners. But the extension of the mayor-commissioner's powers does not end here. In legislation the mayor not only presides over the commission, but in the case of commissions of three has the deciding vote and in commissions of five or seven very frequently the decisive vote in case of a tie. He also is ordinarily entitled to submit proposals and recommendations and in some cases to prepare the budget for the commission. In not a few cities the mayor retains the right of veto.² In Colorado Springs he is given the item veto in appropriation measures, and a vote of four out of the five members of the council is necessary to override his veto; since the mayor as a commissioner may vote, this means that the rest of the council must be a unit against him. On the whole, however, the mayor possesses no power of veto. In some cities—for example, Houston, Texas—he is given the power to appoint most of the important officials of the city, and in Buffalo he is required to acquaint himself with the conduct of each department and to report to the commission. A similar provision is found in the Pennsylvania law. Thus, although by theory the mayor was supposed to be little more than the presiding officer of the commission, there is a distinct tendency to exalt his powers. Aside from this legal extension of his powers, the mayor exercises more influence than the commissioners as a result of the American habit of creating a "strong" executive. Perhaps it is fair to expect that the power of the mayor-commissioners will increase in the purely commission-governed cities as in the usual system or that these

¹ See R. M. Story, *The American Municipal Executive*, pp. 182-198.

² Highpoint, North Carolina; St. Paul, Minnesota; Chattanooga, Tennessee; Greenville, Houston, and Dallas, Texas. See R. M. Story, *The American Municipal Executive*, p. 196 note.

will gradually alter their types of government to the city-manager type, which will be discussed later.

(4) Appointed officers

Under the original system of commission government the important subordinate officers were elected by the majority of the commission. These officers included the city clerk, the treasurer, the auditor, the city solicitor, and the chief of police. The commissioner in charge of a department had the power to appoint only the minor officials. This has been departed from in the optional charter law of Massachusetts, where the commissioners make all the appointments within their respective departments, subject to ratification by the whole commission.

(5) Independent departments

In most commission-governed cities there are independent departments outside of the commission's control. In practically all the cities the administration of the schools is intrusted to a school board instead of being controlled by the commission, although exceptions should be noticed in the case of Buffalo, St. Paul, Chattanooga, and Sacramento. In these cities the commission acts as a school board, appoints the school superintendent, and determines all questions of educational policy. In several cities the fiscal officers, such as the comptroller and auditor, are not appointed by the commission, but are chosen by popular election.¹

(6) Popular control of the commission:

(a) The initiative

According to the Galveston plan the action of the commission was expected to be conclusive and final unless overturned by the state legislature or the courts. When the plan was adopted in Iowa by the city of Des Moines, the machinery of direct popular control was applied to the plan in the form of the initiative, the referendum, the protest, and the recall. The initiative, as applied to commission government, differs little from its use in state affairs. An ordinance or order may be prepared by any person and, if signed by a certain percentage of the voters, must be considered by the commission. The number of signatures necessary for initiating a measure varies from 5 per cent in South Dakota to 40 per cent in the second-class cities under the commission government law in Kansas.

¹St. Paul, Tacoma, Houston, San Diego, and Portland, Oregon, and the cities under the Pennsylvania commission-government law.

The more common percentage is either 15 or 25. If the commission adopts the measure proposed by the petitioners, the matter ends there; but if they desire to amend it or refuse to adopt it, it must be submitted to the next general election, if such occurs within ninety days, or at a special election. The protest was a means adopted in the Des Moines charter for delaying the operation of ordinances passed by the commission until the people had the opportunity to express themselves. Thus, no ordinance except an emergency one goes into effect for ten days; if during that time 25 per cent of the voters of the city sign a petition protesting against such an ordinance, the commission must reconsider their action. When the ordinance is not entirely repealed by the commission it must be submitted to the people at a general election, if one occurs within ninety days, or at a special election. If the ordinance receives a majority vote, it becomes operative at once; if it is rejected, it remains inoperative. This protest just described is only another name for the referendum, which has already been discussed. The Des Moines charter, however, requires that the commission shall grant no franchise to any public-utility corporation without submitting the same to the electorate. Therefore no franchise becomes valid until it has been confirmed by the majority of the electorate voting at that election. The Des Moines charter provided for the recall of the commissioners, and this has been quite widely copied in many city charters. The machinery for using the recall is similar to that which has already been described.¹ The number of signatures required on the recall petition varies from 10 per cent of the voters in the Virginia charter law to 55 per cent under the Illinois laws. In general, petitions may not be invoked against a commissioner until he has been in office a certain length of time, varying from three to six months.

The same arguments may be advanced against the use of popular control in municipal government that have been discussed with regard to state government. But these arguments have not the same validity when applied to government by

(b) The
protest

(c) The
referendum

(d) The
recall

Merits of
popular con-
trol under
commission
government

¹See pages 126-128.

commission. In the first place, it should be noted that the electorate of a city, diverse as it is, is more homogeneous than that of the entire state. In the second place, it should also be mentioned that, except in granting franchises, the referendum is always of the optional type, which even theorists have pronounced the least objectionable. The obligatory type of the referendum as applied to public franchises submits to the voters a question on which they are all supposed to be vitally interested. There are, moreover, certain considerations which would favor the use of these instruments of popular control. Government by commission is a radical departure from the time-honored form of municipal government. It concentrates in the hands of from three to seven commissioners both the power to determine what the tax rate shall be and the power to spend the money raised by taxation. The small size of the commission makes it seem to many critics unrepresentative. The blending of the legislative and the administrative power seems to others a violation of the sound principle embodied in the separation of the powers of government. Rightly or wrongly, the voters would hesitate to trust all these powers to the same small group of men. The provision for the initiative and referendum, therefore, appears to safeguard the traditional rights of the voters and to enable them in crises to make sure that the commission shall carry out their desires. The introduction of the recall of commissioners is also probably a wise move. It may sound revolutionary to those familiar with the traditional type of mayor and council, where the councilors individually have very little power and the personal failings of a single councilor hardly count among the many members. In the commission form of government not only has each commissioner far more power than the individual councilors but he is charged with important administrative duties. It is not unreasonable, therefore, that an opportunity should be given the voters to correct the errors which perhaps were made at the original election. It is significant that although these weapons of popular control are widely found in commission charters, they have not been very frequently used. It is the possibility of their use in an emergency which has brought satisfaction.

The commission form of government has many advantages, as well as a few serious faults and several pretended faults.¹ The great merit of the commission form of government is that it concentrates responsibility. Whatever are the faults or merits of the orthodox type of city government, none could claim that the responsibility was concentrated. The mayor, the administrative departments, the city council, and in some instances both bodies of the city council were constantly shifting the responsibility of mismanagement from one to another. The mayor-and-council system is one in which the checks and balances are a part of the framework. There are no checks and balances in the framework of the commission system. The commission itself is all-powerful to act for better or for worse. The responsibility is theirs, and they cannot avoid it. Whatever safeguards do exist are outside of the framework of government in the use of the initiative, the referendum, and the recall.

By far the greater part of the work of the city's governing body is not governmental, but administrative. The orthodox form of municipal government provides a system of government which has been well tested and approved for governmental purposes. Yet this system is never adopted in any business organization. The commission system attempts to provide a business organization for a body engaged in business. After all, the greater part of the work of city officials is concerned with the paving of streets, the purveying of water, the disposal of sewage, the building of schools and other public buildings—all matters which have little to do with the problems of government. Commission government establishes a board of directors similar to that in a business concern for carrying out the city business.

In the orthodox type of city government the mayor, the administrative departments, and the city council (sometimes consisting of two bodies) all have a hand in the execution

¹The best discussion of the merits and faults of commission government is found in W. B. Munro's "Government of American Cities" (3d ed.), pp. 304-319. His analysis and, in most instances, his conclusions are briefly condensed in this criticism.

Merits and faults of the commission form of government:
(1) Concentrates responsibility

(2) Inculcates business methods

(3) Reduces friction

of a city project. These three or sometimes four independent or semi-independent bodies do not always agree. Some or all of them may have their own particular axes to grind. As a result, under the old type of government, friction and delay not infrequently occurs; under the commission type the commissioner in charge of the department absolutely controls it. It is true that the policy as to what his department shall do may be determined either by the vote of the commission itself or by the direct action of the voters, but once determined, a policy can be carried out without delay or friction. There is little chance for improper political influence in the execution of the project.

(4) Improves
the quality
of municipal
officials

The testimony as to the improvement of officials is by no means unanimous. Investigation shows that a large percentage of former city officials gets into office under the commission system.¹ Although the same type of men may obtain office under the new system, the results, as will be seen, are very different. The testimony of men who have served under both systems is that under commission government there is more incentive for good administration, more opportunity for faithful work. Ultimately it should be remembered that the city is what the voters desire it to be, and that no framework can possibly be devised for a better form of government than the city desires. The open and undisguised responsibility which each member of the commission bears may frequently prevent the secret and sinister influence which interested parties formerly exerted upon individual councilmen and may cause the commissioners to act for the good of the city rather than at the dictates of a special interest.

(5) Is unrep-
resentative

The objection that the commission is unrepresentative is based upon the false assumption that a small body is less representative than a large one. If this principle is carried to its logical extreme all representative bodies are unrepresentative. A large body chosen by wards represents ward politics and political organizations; a small body chosen at large can, if it will, discover public sentiment just as accurately and is likely to be less hampered than a large council.

¹W. B. Munro, "Ten Years of Commission Government," *National Municipal Review*, Vol. I, p. 562.

The criticism that the commission can be easily controlled rests on the assumption that small bodies are more easily controlled than large ones. This is contrary to experience in municipal government. The large two-chambered city council of Philadelphia, which formerly contained one hundred and thirty-two members, was as completely under the control of certain interests as any small body could possibly be.¹ Sinister control of legislative bodies is more apt to be exerted by a political machine and an unscrupulous boss through the power of the party organization than through the corrupt influencing of the individual council member.

(6) Can be easily controlled

The most fundamental criticism of city government by a commission is that it does not go to the logical extreme; it does not sufficiently concentrate responsibility; it does leave the opportunity for friction, logrolling, and shifting of responsibility within the commission. Under the type of government by mayor and council, where, as in Boston or New York, the mayor almost completely dominated the council, there was a very real and definite responsible single head in municipal administration. This is not so in government by a commission, although it has been pointed out² that the tendency is to strengthen and extend the powers of the mayor-commissioner. It is at this point that city government by a commission falls short, and here that the second revolutionary type of city government was introduced; namely, the city-manager form.

Fundamental criticism of commission government

City government by a commission has accomplished many good things, but it has not accomplished all its advocates hoped for. An investigation made in 1915 of eight cities showed that they had succeeded in many instances in reducing the per-capita levy of property taxes.³ These cities under commission government also spent less money per capita, but the net per-capita indebtedness of the cities under commission government

Results of city government by a commission

¹W. B. Munro, *The Government of American Cities*, p. 314.

²See pages 436-438.

³United States Bureau of the Census, *Comparative Financial Statistics of Cities under Council and Commission Government, 1913 and 1915* (Washington, 1916), Table I, p. 9. These tables are reproduced in W. B. Munro, *The Government of American Cities*, p. 319, and in *Bulletins for the Massachusetts Constitutional Convention*, Vol. I, p. 473.

was somewhat greater than that of eight cities under the old form. These statistics tell only a part of the story—the indebtedness of the cities in many cases is an inherited one. The slight difference in per-capita expenditure (\$2.68) probably indicates that the cities' money is more economically spent. Municipal government is expensive under whatever form it is attempted. It is probable that under the commission form less money is wasted and the municipal revenue is more efficiently expended than under the old type of city government. Finally, it should be noted that on the whole government by a commission gives satisfaction. Only a few cities which have established the commission form of government have returned to the old type. The movement has been rather in the other direction, and many commission-governed cities have carried the system to the logical conclusion and adopted the city-manager plan.

CHAPTER XXV

TYPES OF MUNICIPAL GOVERNMENT—THE CITY-MANAGER PLAN

The city-manager plan may be defined as a system of municipal government in which the determination of the municipal policy and the general direction of the city are vested in a council or commission, while the administrative functions are concentrated in a single executive chosen by the commission and designated as the city manager.¹ The city-manager plan, therefore, attempts to remedy several of the evils which the working of the commission plan has disclosed. These evils were, first, the friction and delay which might result from the majority of the commission overruling the action of the commissioner in charge of a special department. Time and time again this has occurred, and the commissioner, who was departmental head, found himself in no better position than an administrative officer under the council type of government. Again, there has been a tendency to elect as commissioners men who were supposed to possess expert knowledge of some department of city administration. This selection of administrative heads by popular vote proved a failure under the mayor-and-council type of government, and in most of the modern city charters the administrative heads were appointed by the mayor with an increasing tendency to free such appointments from confirmation

Definition
of the city-
manager
plan

¹In the Bulletins for the Massachusetts Constitutional Convention, Vol. I, pp. 489-519, there is a modern treatment together with a digest of the Dayton charter and a tabular view of the condition of nine cities under the city-manager form of government. W. B. Munro, *The Government of American Cities* (3d ed.), chap. xv, gives an excellent treatment, together with additional references. Mention should be made of the admirable monograph with full notes and references prepared by Tso-Shuen Chang, *History and Analysis of the Commission and City Manager Plans* (Iowa City, 1918). The files of the *National Municipal Review*, *American City*, and *Short Ballot Bulletins* give excellent current information.

by the rest of the city government. The theory of government by a commission was to provide a council of amateurs who would represent public opinion and outline the policy for the expert to carry out. The system certainly resulted in the choice of amateurs as members of the commission. Since, however, the commission form of government was applied largely in small cities, there seemed to be little need for both a paid commissioner and a paid administrator. As a result, the commissioner frequently undertook to manage the affairs of the department, for which he had little or no qualifications, and to perform duties which he was not supposed to perform according to the original conception of the commission type of government. The city-manager movement carries the form of commission government to its logical conclusion—it provides for a small policy-determining body and a professional, expert administrator.

Develop-
ment and
spread of
the city-
manager
movement

The first city in the United States to adopt a city manager was Staunton, Virginia. In 1898, by a local ordinance, without charter provision, the greater part of the administrative duties of the old mayor and council (who were retained) were turned over to a general manager. Sumter, South Carolina, in 1913 obtained from the legislature a charter which included most of the provisions of the city-manager plan. The form of city-manager government, however, was most fully and carefully worked out in the charter of Dayton, Ohio, which went into effect on January 1, 1914. Since that date the movement has spread rapidly, until about two hundred cities have adopted this form of government in one shape or another. The movement is largely confined to the smaller cities; there are only three of more than 100,000 population—Grand Rapids, Michigan, Dayton, Ohio, and Norfolk, Virginia—which have adopted this plan. Three cities with populations between 50,000 and 100,000 are administered under this plan, while a large number of cities between 10,000 and 50,000 and a still greater number under 10,000 have adopted either the system with all its details or certain modifications.

Method of
adoption

The city-manager plan has been put into effect by five principal methods. In a few instances the city-manager feature

has been grafted on the old type of the city government by means of a local ordinance. Twelve states¹ provide for home rule and allow cities to frame their own charters, and a number of municipalities in California, Michigan, Ohio, and Texas have taken advantage of this and have acquired city-manager charters. A few states provide optional charters, among which is generally found a city-manager plan. A large number of cities, however, have adopted the city-manager plan as the result of special legislative charters granted to the individual city as the result of a special statute. In a few states there exist general city-manager charter laws which any city may adopt.

The plan adopted by Dayton, Ohio, has served as a model for most of the other charters. Since these charters, however, vary only in details, it is advisable to analyze with some care the Dayton plan and then to show some of the variations.

The
Dayton city-
manager
plan :

All the municipal powers in Dayton are vested in a commission of five citizens. This commission is chosen at large for a term of four years, either two or three commissioners being elected every alternate year, and is thus a continuous body. Nominations are made at nonpartisan primaries upon a petition signed by at least 2 per cent of the registered voters of the whole city. The names of the four or six candidates who receive the highest number of votes are placed upon the ballot without party designation, and the two or three candidates who receive the largest number of votes at the polls are declared elected. The commissioner who receives the highest number of votes at the election of three commissioners is designated as mayor. It should be noted that the commissioners are not elected for any particular department, as in some of the cities governed by commissions; in fact, according to the Dayton plan a commissioner does not preside over an individual department. The mayor acts simply as the presiding officer, and in ordinary times has no administrative powers. In some cities, however, he may, in time of emergency, assume control of the police and govern the city by proclamation. Occasionally he is made the sole judge as to whether such an

(1) The
commission

[The mayor]

¹Arizona, California, Colorado, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Oregon, Texas, and Washington.

emergency exists or not.¹ In Dayton the commissioners receive a salary of \$1200 a year and the mayor \$1800. Any member of the commission, after he has been in office six months, is subject to recall on a petition signed by 25 per cent of the voters.

(a) Salary
(b) Subject to recall

(c) Duties The general duties of the commission are to enact ordinances and adopt regulations for the government of the city. All ordinances adopted by the commission are subject to a referendum, and the initiative may be invoked in case the commission fails to act. In so doing, the commission may create or abolish departments, may levy taxes and vote appropriations, and may investigate the financial transactions of any department. It elects its own clerk (who also serves as city clerk) and appoints the civil-service board. It has no direct control over the administration of the city. Probably its most important function is the election of the city manager, and it is through his selection or recall that the commission is most effective in controlling the administrative affairs of the city.

(2) The city manager:

The city manager in Dayton is elected by the majority vote of the commission for no fixed term, at a salary named by the commission. He is thus at any time subject to recall by the commission; and in Dayton, contrary to the common practice, he may be popularly recalled as well. The charter of Dayton and of most city-manager cities provides that the city manager shall be appointed without regard to his political beliefs, that he shall be an expert, and not necessarily a resident of the city. Dayton and many of the cities adopting this plan have attempted to obtain the best type of administrator possible, without regard to either residence or political affiliation. Many of the smaller cities have advertised for city managers and have chosen their executives as the result of the comparative and competitive examination of their records. In not a few instances managers of small cities have been called to similar positions in larger and more important places. This system of obtaining the city manager irrespective of his residence or politics is one of the most healthful results of the city-manager movement. As has been said, the city manager of Dayton is subject to popular recall. This is considered a grave mistake by most

¹ R. M. Story, *The American Municipal Executive*, p. 202.

critics, for it forces the city manager to satisfy the general public in carrying out the directions of the commission, to which he is responsible. It can be defended in the Dayton charter only on the ground that it was a compromise necessary in order to secure the adoption of the system.

The city manager exercises great influence in his advisory capacity. He attends the meetings of the commission and has the right to take part in the discussion. He thus may propose, defend, or plead for the adoption of any particular policy, but he has no vote in determining this policy. However, it may be expected that the advice of a manager appointed by a commission, and one in whom the commission has full confidence, will have great weight. (a) Advisory power

The city manager in Dayton and in most other cities is the real and practically the sole executive of the city. By charter he is instructed to see that the ordinances are enforced, and he is the executive officer who is intrusted with carrying out the policy of the commission. (b) Executive power

In Dayton and in most cities operating under this form of government the city manager is given wide appointing power. The city officials in Dayton are divided into the "classified" and "unclassified" services, the latter including the heads of the administrative departments. The city manager may appoint these officials on any basis and according to any rules he may determine; no confirmation by the commission is required. He also is given authority to remove—for any reason, at any time—any of his appointees in the "unclassified" service. All subordinates are put upon what is known as the "classified" service. The city manager may appoint these subordinates, but only in accordance with rules established by the municipal civil-service commission. He may likewise remove any member of the classified service, but only after a hearing before the civil-service board upon charges made in writing and in accordance with the proper procedure. (c) Power of appointment and removal

The city manager has the control of all city departments. He may investigate the affairs of any department either in person or through investigators appointed by him. He keeps the departments in touch with one another, adjusts their plans, (d) Supervises all city departments

and settles any differences. Through his power to appoint and remove the head of every department he can make his directions compulsory.

(3) Admin-
istrative
departments

The Dayton charter establishes five administrative departments: finance, law, public welfare, public safety, and public service. Each of them is under a director, who, as has been said, is appointed by and is responsible to the city manager. The duties of most of the departments are explained by their titles, but it is worth while to note the work of certain bureaus which have been established within the departments by ordinance of the commission. For example, the department of finance has three divisions; namely, the treasury, the accounting, and—perhaps of most importance in developing economical administration—the bureau of purchasing. The department of public safety has divisions for police, fire protection, sealing of weights and measures, and inspection of buildings. There are four divisions in the department of public service: (1) the division of engineering, with the bureaus of design and construction, sewer maintenance, and street-lighting; (2) the division of streets, with the bureaus of waste removal, street-cleaning, and street repair; (3) the division of water; and (4) the division of public lands and buildings. The department of public welfare includes the divisions of health, parks, playgrounds, legal aid, correction, and the local employment agency.

(4) Finan-
cial provi-
sions

The Dayton charter is unique in the attention it pays to the financial details of the city government. Many of the charters providing for the new types of city government are content to prescribe a framework which is left to be filled in by municipal ordinances. The Dayton charter goes into great detail in prescribing provisions for budget-making and purchasing. The estimates for the budget are prepared by the city manager from data furnished him by the department heads. These estimates are then published and submitted to the city council. The charter also requires that before the commission acts upon it public hearings shall be held. Almost as important as the provisions for the budget is the system prescribed for municipal accounting, which provides for an accurate determination of the costs of all the city services. Finally, a central purchasing

agent is provided, who buys the supplies for all the departments of the city. Many of the provisions with regard to finance, accounting, and purchasing which are found in the Dayton charter may prove in practice a little too rigid, yet they are a noteworthy effort to remedy the abuses which have been disclosed in these departments of city government.

The Ashtabula plan for a city manager is an attempt to meet one of the criticisms made against the Dayton plan. It has been held that the Dayton plan of providing for the election of all the commissioners at large does not adequately insure minority representation. In the Ashtabula plan the seven members of the council are elected by means of the Hare system of proportional representation. This has already been described.¹ In the elections which have been held under this system the dangers feared by the critics of proportional representation were not realized. A more vital danger was disclosed perhaps in the fact that the members of the council so elected represented very definite racial, religious, or economic groups and lacked homogeneity of political purpose.

The city-manager plan is too new for an accurate estimate of what has actually been accomplished. Yet in the years in which it has been in operation it has apparently satisfied the cities which have adopted it, as no city has returned either to the commission or to the mayor-and-council type of municipal government. The commission appointed to compile information and data for use in the Massachusetts Constitutional Convention, under the direction of Professor Munro, sent in 1915 to nine typical city-manager cities a list of forty-five definite questions.² The answers to some of these questions are tabulated in the Bulletins for the Massachusetts Constitutional Convention³ and are amplified by Professor Munro in the latest edition of "The Government of American Cities."⁴ His

¹See pages 102-104; also A. R. Hatton, The Ashtabula Plan, in *National Municipal Review*, Vol. V, pp. 56-65.

²These cities were Bakersfield, California; Jackson and Manistee, Michigan; Dayton and Springfield, Ohio; La Grande, Oregon; Amarillo and Sherman, Texas; and Staunton, Virginia.

³Vol. I, pp. 506-508.

⁴Pp. 395-398.

The
Ashtabula
plan

Results of
the city-
manager
plan

City
managers
are experts

conclusions are similar to the evidence which is set forth in the City Managers' Year Book and in other publications. In general they show that the city-manager system has succeeded in obtaining experts in administration. As has been pointed out, many of the smaller cities choose their managers as the result of advertising and of comparative records. The result is that not only are the cities attempting to secure experts, but men are training themselves for this profession. The type of man most frequently selected is an engineer—preferably one who has had experience in municipal affairs. In most cases the city manager is not a resident of the city; this is all to his advantage, inasmuch as he starts with a clean slate and free from local prejudices.¹

Financial
results

The published reports show that all the nine cities kept within their revenue and were not obliged to issue bonds. In Springfield, Ohio, for example, a floating debt of \$120,000 was liquidated in two years. The bonded indebtedness in Jackson, Michigan, was reduced by \$50,000 and a floating indebtedness of \$14,000 paid off. In most of the cities reporting, the tax rate either was not raised or was actually lowered. All but one of the cities reported that new and improved accounting methods were introduced, and in all of them the budget system is followed, generally of the segregated type. The city manager in four of the cities acts as purchasing agent for all supplies, while in three cities separate purchasing agents are established.

Adminis-
trative
efficiency

The adoption of the city-manager plan has resulted in greater administrative efficiency. The work of the heads of the various departments is coördinated and kept in harmony through the manager, while the discipline and management of the municipal employees is taken out of politics and governed by principles of efficiency. A great deal has been done for the improvement of the city in the care of the public health and the general betterment of the community. This has been accomplished in most cases without increasing the tax rate, through methods of greater economy and efficiency.

¹*American City*, Vol. XII, pp. 400-514, and Vol. XIII, pp. 419-421, give brief biographical sketches of some of the city managers.

The popularity and success of the city-manager movement indicates that it is a system which has become a permanent type of American municipal government and which probably will be extended. Many of the three hundred cities which have adopted the commission form of government will not find it satisfactory for their purposes, and it is more likely that they will carry the principles to their rational conclusion and adopt the city-manager system than that they will revert to the mayor-and-council type. Also, more and more cities are adopting the plan each year. It seems to be a logical development of the attempt to place the government of our cities upon a business basis.

CHAPTER XXVI

ADMINISTRATIVE DEPARTMENTS: OFFICIALS AND EMPLOYEES

ADMINISTRATIVE DEPARTMENTS

Position of
administra-
tive depart-
ments in
American
municipal
government

The administrative departments occupy a unique position in municipal government in the United States.¹ In Great Britain administration is conducted by means of committees of the borough councils. In the burgomaster type of organization as adopted in Germany the heads of the administrative departments are usually the subordinates. In France the mayor is the repository of all the executive power, and although the adjoints are elected by the council their duties are assigned them by the mayor, who retains a nominal if not actual control over them. In England the committees of the council (which is the policy-determining body) constitute the administrative departments. The German city council determines the policy, which the administrators carry out independently of the council. In France and to a certain extent in Italy the council chooses the administrators, but the mayor as executive directs and controls their policies and acts. Examples may be found in the United States of these three types of administrative departments. Yet the general tendency here is toward self-contained administrative departments, which, to a large degree, are beyond the immediate control of the city council.

Originally the supervision and actual conduct of administration was one of the functions of the city council. As has been seen, the slight administrative functions undertaken by the

¹W. B. Munro, *The Government of American Cities* (3d ed.), chap. x, gives a clear account of the position and organization of administrative departments, together with references to other material. Nathan Mathews, *Municipal Charters*, chap. vi, deals with the organization of the administrative departments and the appointment of the officials.

cities in the early years of the nineteenth century were carried out by committees of the council. The deterioration in the character of the council and the inefficiency of its work in administration led to a change. At first the functions of administration were given to boards or officials chosen not by the council but by the electorate at the polls. This was the beginning of the creation of independent, self-sufficient administrative departments. Election was soon found to be a poor way of securing administrative efficiency. Consequently the choice of boards or officials was vested in the mayor, either with or without the confirmation of the city council. In some instances, however, administrative departments were created whose heads were chosen by the council. The general tendency under the mayor-and-council system of government is toward the establishment of administrative departments under the direction of the mayor; that is, the heads of these departments in many cities are appointed and removed by the mayor without regard to the city council. The same tendency is to be noticed in the city-manager type of government, where the city manager appoints and supervises the departments independently of the council. In commission government each commissioner is nominally the head of an administrative department and nominally responsible for its operation, but practically the other members of the commission too often interfere in the management of a department and sometimes overrule the commissioner in charge. It was because of this tendency that the city manager was made solely responsible for the administration of all the departments.

Development of administrative departments in the United States

The city council under every form of government should control the policies of the various departments. It is the legislative or policy-determining body, and its proper function is to decide what shall be done in municipal administration. Furthermore, the city council exercises the power of taxation and appropriation and thus, through its control of finance, determines to a very large degree the activities of the administrative departments. This will be brought out clearly in the discussion of the financial administration of the city and, particularly, of the administrative power which it exercises through the budget. There can be no question but that the ultimate

Extent to which the council should control the departments

control of the administrative departments must lie either in the city council or in the voters acting directly through the initiative and referendum. The real problem is how this control can best be exercised so that the council shall freely exercise the policy-determining power, and the administrative departments be equally free in carrying out this already determined policy and in conducting their affairs without interference on the part of the council. At the one extreme stands the system in operation in city-manager cities, where the council is theoretically prohibited from all interference and the administrative departments are solely responsible to the city manager; at the other extreme is the method of administration by committees of a council in vogue in England and to a slight extent in some American cities.

Advantages
of council
committees
as admin-
istrative
bodies

Theoretically there is much to be said in favor of conducting municipal administration by means of council committees.¹ Not the least among these advantages is the fact that it makes service in the city council attractive. It is stated that the decline in the caliber of council members was due to the fact that the councilmen had few attractive functions to perform. The argument is that if more was given to the councilors to do, a better type of man would be attracted to do it. This may be true in theory, but historically the character of the council declined at a time when it was performing practically all the functions of administrative departments. One may well doubt whether the traditions of seventy years could easily be overcome and men of experience and administrative ability secured for the city council even if its functions were extended. Emphatically this is likely to be the case under the system of the mayor and council. Administration by council committees, however, does embody a sound principle. As has been pointed out the council is the policy-determining body in the city government, and it also controls the purse. It is ridiculous to expect that an elected body endowed with these powers will surrender them entirely to appointive officials. And even if the charter of the city makes such a provision, members of the city council would still individually exercise influence. Thus,

¹ See W. B. Munro, *The Government of American Cities*, pp. 237-239.

theoretically, administration by council committees has much in its favor; practically, it has failed to work satisfactorily in the United States.

The number of administrative departments varies greatly in different cities, depending both on the extent to which municipal administration is developed and on the extent to which the various fields have been sharply differentiated. In addition to the regular administrative departments, which are more or less under the control of the city government, there are often to be found boards, commissions, and officials, sometimes under direct state control and sometimes occupying an anomalous position. New York City maintains 15 administrative departments; Chicago, 12; Philadelphia, 11; Boston more than 30; St. Louis, 16. As has been shown in the chapter on commission government, the tendency is to reduce the number of these departments, and most cities of middle-size are able to group their administrative affairs into five or six departments. In general, these departments could be organized as follows: (1) the legal department; (2) the department of finance, which would deal with assessments, taxes, the treasurer's office, and the auditor; (3) the department of public safety, which would include the police and fire departments, the inspection of buildings, and the granting of licenses; (4) the department of public works, dealing with the construction and maintenance of public buildings, streets, sewers, parks, and playgrounds; (5) the department of public health. In most cities the department of education is entirely separate from the other administrative operations of the city government and is intrusted to an independently chosen school committee. Individual cities, however, may find it advantageous to group their administrative functions in a different organization.¹ The modern tendency is not only toward the reduction of the number of these departments but toward their closer correlation, in order that the work of the city may be viewed as a whole and the different functions not duplicated by separate departments. In a very few cities

Number of
adminis-
trative
departments

¹ See W. B. Munro, *The Government of American Cities*, p. 251 note; also Nathan Mathews, *Municipal Charters*, pp. 54-55, for charts showing various types of administrative organization.

the heads of the administrative departments act as a cabinet to the mayor, and under the city-manager type the comparatively small number of departments enables the city manager to keep their work closely correlated and under his supervision.

Method of
choosing
heads of
depart-
ments:

(1) Popular
election

(2) Election
by the city
council

(3) Appoint-
ment by the
mayor with
confirma-
tion by the
city council

(4) Appoint-
ment by
the mayor
without con-
firmation

(5) Selec-
tion by the
state

In general, there are five ways by which the heads of administrative departments are now selected. In most cities one or more departments have at their head officials chosen by popular election. This is particularly true in the case of the financial department, and the city auditors and the city treasurer are quite commonly popularly elected. In a large number of cities not of the first class the executive officers of some departments are still elected by the city council. In many cities officials are appointed by the mayor subject to confirmation. It is the usual traditional method adopted when popular election proved unsatisfactory, but, as has been pointed out, it has resulted in a method of shifting responsibility rather than in efficient administration. Appointment by the mayor without confirmation is the method which is followed in most of the larger cities and is increasing in popularity. It concentrates the responsibility directly upon the mayor and enables him through his power of appointment to insure a consistent policy. In a few cities the heads of some administrative departments are chosen by the state authorities. According to this method the city government has no voice in the selection of the heads of its administrative departments. This has been tried in the police administration of some of the largest cities, where the police commission or commissioner was sometimes appointed by the state legislature.¹ This method is a violation of the principle of municipal home rule, but the desperate condition of the cities to which it was applied necessitated heroic measures. Since the city government is deprived of all voice in the choice of such an official, it not infrequently puts many obstacles in his path and through control of the purse is able to prevent a department from running smoothly.²

¹The governor appoints the commissioner of police for Boston; the Maryland legislature elects the three police commissioners for Baltimore.

²In a few cities the state courts make appointments; the fifteen members of the Philadelphia board of education are appointed by the court

The head of an administrative department should be an expert in administration rather than in the affairs of the particular department over which he presides. Technical experts are necessary in the conduct of city affairs, but their place is not at the head of the departments; executive ability, personality, wide vision, are more necessary than scientific knowledge of the working of the departments. Thus, in a large city the police commissioner must possess the foregoing qualities, while the chief of police can be relied upon to apply his expert knowledge in carrying out the directions of the commissioner. In most cities administrative departments are manned by appointees chosen more or less according to the rules of civil-service boards, but in only one instance (Boston) are the heads of the administrative departments subject to approval by the civil-service commission. The ordinary civil-service tests and competitive examinations are not applicable to the choice of the executive head; few tests other than actual experience can show executive ability, personality, and breadth of vision. Consequently the ordinary practice in the United States is sound in not requiring the appointment of the heads of departments as the result of competitive examinations. Yet sad experience has shown the necessity for devising some check upon appointment by the mayor. Too often the mayor regards the heads of the departments as mere currency with which to pay his political debts, and appoints a man for partisan service rather than for executive ability.

Qualifications for heads of administrative departments

The Boston plan has already been mentioned in connection with the appointing power of the mayor.¹ Attention, however, should be called to it again in connection with its effect upon the qualifications of the administrative departments. Briefly, the Boston plan vests in the mayor the appointment of all administrative officials, except the police commissioner without the confirmation of the city council; but it requires that the civil-service commission—a state body appointed by the

Effect of the Boston plan upon administrative departments

of common pleas. See W. B. Munro, *The Government of American Cities*, p. 247. Little can be said in favor of this mingling of judicial and administrative duties.

¹ See page 428.

governor—shall certify that the mayor's candidate is qualified for the post by training or experience. It should be noted that this plan is not in any sense competitive. There is no obligation either upon the mayor or upon the civil-service commission to appoint or certify to the appointment of the best candidate, but only of one who is fitted "by education, training, or experience to perform the duties" of the office. It must be admitted that this plan is a violation of the principle of complete home rule in that it restricts the choice of the mayor. On the other hand, the responsibility still rests with the mayor, for he is the appointing authority and is checked only from making appointments which are obviously unfitting. During the time this plan has been in operation it has protected Boston from the worst type of political appointments even if it has not given the best kind of administrative heads. Even this little, however, should be counted to its credit. The Boston plan has not been adopted in city-manager cities, probably because the city manager is supposed to be above political influence and his success dependent upon the administration of the various departments. Yet it is somewhat remarkable that other cities, in attempts to reform municipal administration, have not adopted something analogous to the Boston plan.

Terms of
heads of
departments

No fixed term can be laid down for the heads of departments. Much depends upon the nature of the work the department is called upon to perform. Where such work involves a program extending over considerable time, the head of the department should be given opportunity to demonstrate his ability in carrying out this plan. In general, it may be said that the terms of department heads are too short and that the incumbent is not given sufficient opportunity either to familiarize himself with the work of his department or to put through a program of work or reorganization. Under the ordinary types of municipal framework indefinite terms are not favored, as they tend to encourage interference on the part of the city government and attempts to curry favor on the part of the incumbent. Less objection can be made to indefinite terms under the city-manager type of government. The city manager himself holds his office for no fixed term; since he has the full and

unrestricted power of appointment of the heads of departments, together with the power of removal, there seems no reason why such department heads should not serve during pleasure.

There are almost as many methods for the removal as there Removals are for the appointment of administrative officers. Where the administrative officer is chosen by popular election, he cannot be removed during his term except for grave misconduct, unless the system of popular recall is in vogue. Where the officer is chosen by the city council, the council may usually suspend or remove the official. If the mayor and council share in the appointment, the concurrence of both is necessary in order to remove. In those cities where the mayor alone appoints he is usually given the power of removal, although a public hearing may be demanded. In Boston, where the mayor appoints with the consent of the civil-service commission, he has the sole power of removal. The whole tendency is to surround removal with restrictions sufficient to prohibit unjust and capricious removals, although it must be admitted that these restrictions are of little avail. As Professor Munro has well pointed out,¹ the only effective security against unjust removals is tradition backed by active public opinion.

The salaries paid to heads of administrative departments are Salaries far below those paid in private business to executives charged with similar functions. American administrative officials, however, receive far higher salaries than those in England or on the Continent for similar work. But abroad there is more fixity of tenure, a general willingness on the part of the municipalities to retain a competent administrator, and a contentment on the part of the administrator with his profession, which makes for permanent tenure. In the United States the term of office is short, the tenure uncertain, the reward in private business far higher. So much higher are the salaries in private business that the voters would not tolerate similar salaries in municipal affairs.

A much-debated question in the organization of administrative departments is whether they shall be headed by a single commissioner or by a board. No hard and fast rule can be

¹The Government of American Cities, pp. 249-250.

Organiza-
tion of de-
partments:
boards or
commis-
sioners

laid down. Some types of administrative work require the direction and supervision of a single official; in others a group of individuals may best represent public opinion.¹ A commissioner is obviously best adapted for departments like the police, fire, and law departments, while in other fields—particularly where racial and religious prejudices or traditions are involved—public sentiment, if not efficiency, is better satisfied with the administration of a board. Thus public libraries, poor relief, and schools are commonly administered by a board. If the system of partial renewal is applied to the board, there is the opportunity of insuring continuity, which might be sacrificed in the case of a single commissioner. Again, the board system has something in its favor on the score of immediate economy. If the department is headed by a single commissioner he must be paid an adequate salary, for he is supposed to give his entire time to the administration of the affairs of the department. If, however, the administration is shared by a board which employs the requisite expert, the salary of an executive is nominally saved to the city. One of the best examples of the use of a board with an expert is found in the school boards of the smaller and middle-sized cities. It should be emphasized, however, that the board system is only successful when the board employs an agent who is more or less of an expert. In such cases—as in the case of the board of education, the board of public health, and, in some cities, the board of public works—the board directs the formulation of the policies and the expert carries them out.

Correlation
of adminis-
trative
departments

Under the old type of mayor-and-council organization few arrangements were made for a correlation of the whole work of the various departments. It has thus happened that the sewer department in a city has been known to let the contract for the construction of a sewer at the same time that the highway department had begun to raise the grade of the same street. Under the system of the responsible mayor, particularly in those cities where the heads of departments served as a mayor's cabinet, much more attention is paid to the correlation of the work of the various departments. Yet even in these cities much

¹See W. B. Munro, *The Government of American Cities*, pp. 252-257.

remains to be done along this line. According to the original idea of the commission form of government, this correlation was provided. Under the city-manager plan it is not only provided but actually enforced through the supervisory power of the city manager.

SUBORDINATE OFFICIALS AND EMPLOYEES

The work of an administrative department is carried on not by its head but by his subordinates.¹ The city treasurer may be the responsible financial officer of the city, but his clerks have the actual handling of the money and keep the books. The chief law officer depends to a large degree upon his subordinates for drafting papers, such as contracts, and preparing opinions concerning the legality of a proposed measure. Only in the smallest cities do the administrative officials perform these functions themselves, and even in these cities they are frequently assisted by subordinates. The latter may vary in technical expertness and skill, from the city engineer and sewage expert to the man who digs ditches and the clerk who makes out the tax lists. The city is dependent for the actual performance of its functions not upon the heads of departments but upon minor officials and employees.

The organization of administrative departments varies from city to city and between departments in the same city. In theory, at least, there is at the head of each department an officer or a board who assumes all responsibility and who directs the work of the department. Its policy may be determined by the city council or by popular vote, but, in theory at least, the head of the department is solely responsible for accomplishing the work of his department. Everywhere theoretically, and actually in the large cities, the head of the department is the general executive, and he should be assisted by some deputy or subordinate possessing expert and technical skill. In the abstract this deputy furnishes the expert knowledge and gives the technical directions necessary in order to put through the work

¹The best brief treatment of this subject is found in W. B. Munro's "The Government of American Cities" (3d ed.), chap. xii, which gives bibliographical references.

Subordinates in an administrative department

Organization of an administrative department

of the department. Thus the city engineer is responsible for the general plans of the engineering department, while subordinate officials, like surveyors or draftsmen, prepare the actual plans and see that the workmen carry them into effect. In large departments there are several such deputies, sometimes of coördinate rank, but often subordinate to one another. Below these deputies are heads of bureaus, supervisors, or foremen, and finally the actual working force of the department engaged in clerical or manual labor. Directions and orders ought to descend from the head to the workmen; appeal from the workmen should be to the head, and the department should be self-contained. Practically—as will be shown and as common knowledge acquaints us—the departments are not self-contained.

Number of
municipal
employees

The number of persons who are on the salary list or pay rolls of a large city is enormous. Professor Munro¹ has estimated that 8 per cent of the voting list in New York and 12 per cent in Boston is so accounted for. But these numbers, large as they are, hardly show the political influence of these employees. To these should be added their relatives and friends; and, since experience has shown that municipal employees are generally active in politics, Professor Munro estimates that the political strength of municipal employees in large cities is somewhere between one sixth and one eighth of the entire electorate. This probably constitutes the largest single class liable to bring political influence to bear on municipal administration.

Politics and
administra-
tion

It is a legitimate function of politics to control both the lawmaking and law-executing bodies of the state or city;² first, to determine what the law shall be and, second, to keep the administrative officers in harmony with the lawmaking officers. Where political action goes beyond this and invades the administrative field, it attempts a function which does not naturally belong to it and produces, as experience has shown, disastrous results. Unfortunately this is exactly the field in which politics has been too often active in municipal government. Not content with determining the composition and thereby the policy of the city council, political parties and, to a greater extent,

¹The Government of American Cities, p. 266.

²F. J. Goodnow, *Politics and Administration*, chap. ii.

political machines, bosses, and leaders have intervened in the organization and function of administration. The responsibility which the head of a department may properly be asked to bear is dependent upon or should be measured largely by his authority. If his control of his subordinates is weakened through the possibility of political appeal and the interference of the boss or party leader, his power and influence are correspondingly weakened. This is exactly what has happened again and again in municipal administration. Deputies and subordinates and employees were appointed not for reasons of ability or efficiency but because of political influence. They were retained on the pay rolls not because of their worth but from some real or fancied political necessity. The discipline and control of the head of the department or of his deputies were constantly being weakened by the appeal to and the intervention of some political leader. To say nothing of corruption, there is an almost incalculable cost to the city for incompetence and inefficiency resulting from the improper and unjustifiable commingling of politics and administration.

One attempt to remedy this evil has been along the lines of divorcing city government from party organizations. Members of the council and city officials were nominated by petition or at nonpartisan primaries and elected without the party designation. It was hoped that this would free municipal administration from interference by partisan organizations. But the nonpartisan character of the officers so elected was nominal rather than real, and under other names and by different means the same influences were at work.

To weaken the influence of party politics, particularly as it was manifested in the mayor-and-council type of government, the powers of the mayor were increased at the expense of the council. He was allowed to appoint the heads of departments without confirmation by the council, and, in theory at least, the heads of these departments were responsible solely to him. This was a step in advance, but when the council was denied a legal method of control over the department heads, it too often sought extra-legal influence, and even in departments of the type just described party politics played a great part in administration.

Methods of
improve-
ment:
(1) Non-
partisan
politics

(2) Changes
in the
structure of
city gov-
ernment

(3) Commission government

The commission system was a frank admission that politics and administration could not be kept separate, and each member of the commission which corresponds to the city council headed an administrative department. The theory was that a commission would function as a group of heads of departments, yet actually experience too often shows that the commissioners, like the old city council, intervened for political reasons in the administration of the department of a single commissioner.

(4) City manager

The city-manager type of municipal government attempts a radical divorce of administration from politics. The council controls by means of determining the policy, making the appropriations, and choosing the manager. Beyond that the administrative officers—whether the city manager or his subordinates—are in theory at least given a free hand. Whether they will continue to be free from improper political influence is a question, and it may be that even under the city-manager form, as under the responsible-mayor type, the members of the city council will seek extra-legal methods of influencing the administration.

Selection of municipal officials and employees

Until the last quarter of the nineteenth century there were few principles determining the selection of municipal officials and employees. In general, party regularity and party necessities governed the choice. The spoils system was carried even further in municipal government than in the state and nation. With officials and employees so selected, the improper political influences just described dominated all departments. The great problem in bettering municipal administration lies in the improvement of the city officials and employees. The greatest step taken toward its direction has been to adapt the principles of civil-service reform to city appointments.

Types of civil-service commissions

In general there are three types of municipal civil-service commissions: In the first the commission is selected by the mayor or city council and applies the ordinary tests and rules to municipal appointments. The great disadvantage of this system is that a spoilsman mayor may appoint a compliant commission, which, under the guise of applying tests and rules, will enable the organization to fill the municipal offices with

appointees under the protection of the civil-service system. Examples of this type are found in Philadelphia and Chicago. In the cities of New York State the mayor appoints the civil-service commissions, whose work is supervised by the state civil-service commission appointed by the governor. This plan attempts to combine local administration with state supervision. Unfortunately the supervision given by the state commission in New York State is not sufficiently active or severe in dealing with evasions.

Since 1884 the cities in Massachusetts have been under a state civil-service commissioner. This commissioner and his department prepare examinations and tests for all offices and employees which are subject to the law. The examinations are administered and corrected by state authorities, and the results certified to the cities. The advantage of this system is that it removes entirely from the field of local politics the appointment and control of the examining commission. It is more economical in that it serves the entire state and saves the different cities the expense of maintaining their own commissions. It is, however, contrary to the principles of home rule, yet the invasion of this field is so slight and the results obtained so excellent that the actual advantages seem greatly to outweigh the theoretical disadvantages.

The principles of municipal civil service are similar to those in the state and national governments. Appointments are competitive, dependent upon passing certain tests; removals can be made only for cause; and partisan activity and partisan assessments are prohibited. Civil-service reform has been most sharply criticized on the ground that the tests were too academic and were inadequate guides of administrative or executive ability. That some of the earlier examinations were open to this objection may be admitted, but the modern method of combining a written examination with a physical test and, as in some cities, posting the names of the candidates and asking for recommendations or criticisms has done much to remove these objections. It is true that neither written nor physical examinations are complete indications of the executive ability of a deputy in an administrative department or of the bravery

The Massa-
chusetts
plan

Principles of
municipal
civil service

and resourcefulness of a policeman, but they furnish evidence of such characteristics. Although the competitive system may not always produce the best type of officials and employees, it at least keeps out the worst.

Promotion Logically promotion, like appointment, should go by merit, and this should be determined by tests kept in the various departments. This system is too seldom adopted; promotions are made either by favor or as the result of long tenure.

Dismissal Misfits and improper appointments may be made under the civil-service competitions as under any other plan, and provision must be made for the removal of such appointees. As a rule, all the law requires is that the dismissing officer shall show cause for the removal of a civil-service appointee, although in some instances a public hearing is necessary. In the vast majority of cases the removal is sustained. Yet the tenure of officers and employees appointed under the civil-service system is more secure than the mere reading of the law would show. The heads of departments do not relish public hearings, and the appointee can frequently bring to his aid a considerable section of public opinion which will make it unpleasant, if not politically unwise, to remove even an inefficient officer.

Pensions Few American cities provide pensions for their employees, and, even in those cities which do, the system is ordinarily confined to school-teachers, policemen, and firemen. The cities are placed between the horns of a most unpleasant dilemma. Public opinion is quite ready to condone the carrying of superannuated employees on the city pay roll and would probably condemn a wholesale discharge of faithful employees who have passed the age of efficient service, with the result that the work of the city is slowed up. Certain positions, like those on the street-cleaning department, are sometimes considered as a measure of outdoor poor relief, with little regard to the best interests of the city; the younger and more efficient employees have to follow the pace set by the older. On the other hand, the thought of saddling a city with a pension system for all its employees does not appeal to the taxpayers. In general, the city laborers are in usual times paid higher wages than is ordinary unskilled labor, and for the state or municipality to establish

a pension system in behalf of such a favored class and to neglect the more numerous and less fortunate seems unfair.

Until recently the question of the organization of city employees has not been vital. Associations for self-help and improvement among the employees were encouraged, and even organizations to increase pay were tolerated. Recently, however, these organizations have attempted to affiliate with the American Federation of Labor and to utilize the right to strike and sometimes to threaten a sympathetic strike in order to enforce their demands or the demands of their associates. This was brought in a startling manner to the public attention in the Boston police strike of 1919, where it was shown that certain classes of city employees—in this instance the police—could not with due regard to the safety of the community be allowed to refuse to perform their duties. In like manner the firemen of a city, the employees of the city's waterworks, and other bodies of employees may form a class which because of the functions they perform may be debarred from the right to strike—a right which the courts have upheld in other employment. The question is by no means an easy one to decide, but analogies may be found in military organizations, where a soldier during his term of enlistment assumes additional responsibilities and foregoes rights which are ordinarily exercised by other classes of citizens. Thus it might reasonably be required of certain classes of municipal employees that they forego the right to strike because of the nature of their work.

Labor unions
and city
employees

CHAPTER XXVII

MUNICIPAL ADMINISTRATION. SAFETY

THE ADMINISTRATION OF THE POLICE, FIRE, AND HEALTH DEPARTMENTS

1. *The Police*

Definition
of the term
"police"

The phrase "police power" is extremely elastic and difficult to define comprehensively. In the widest sense it includes all the powers of government; in a narrower sense it has been used to include those powers which deal with internal administration apart from finance, military, judicial, or foreign affairs.¹ In the ordinary use of the term in municipal government, "police" has come to designate one agency for the prevention of disorder and crime and the suppression of violations of law. Even in this restricted sense the police functions are of three sorts: legislative (that is, the functions exercised by the city council in passing ordinances), judicial (that is, the enforcement of police laws and ordinances by the police-court justices), and, finally, the protection of public safety and the prevention of the violation of law which is performed by the police officers. The discussion in this chapter deals largely with the so-called administrative police, or the organization and functions of the police department. It should be remembered, however, that these functions and this organization are conditioned and determined both by the legislative police power, which is exercised by the state legislature or the municipal council, and by the judicial police power, which the judges exercise in dealing with the offenders brought before them by the administrative police.

The functions and duties of the police department are manifold. Originally it was little more than to prevent disorder

¹For a brief discussion of the use of the word "police" see Goodnow and Bates, *Municipal Government*, pp. 258-260.

and crime. But with the growth of the cities and (particularly in America) with the attempt to regulate minutely many things by ordinance their duties have greatly increased. Moreover, in modern times the functions of the police have extended from merely that of repression to prevention, until today they are charged with a variety of duties only vaguely understood by the average citizen.¹ A good idea of these duties may be gathered from the charter of Greater New York, which prescribes the following duties:²

The functions and duties of the police

It is hereby made the duty of the police department and force, at all times of day and night, and the members of such force are hereby thereunto empowered, to preserve the public peace, prevent crime, detect and arrest offenders, suppress riots, mobs and insurrections, disperse unlawful or dangerous assemblages, and assemblages which obstruct the free passage of public streets, sidewalks, parks and places; protect the rights of persons and property, guard the public health, preserve order at elections and all public meetings and assemblages; regulate, direct, control, restrict, and direct the movement of all teams, horses, carts, wagons, automobiles and all other vehicles in streets, bridges, squares, parks, and public places, for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health, and to that end the police commissioner shall make such rules and regulations for the conduct of vehicular traffic in the use of the public streets, squares, and avenues as he may deem necessary, the violation of which rules and regulations shall be a misdemeanor punishable by not less than two or more than thirty days' imprisonment, or by a fine of not less than five or more than fifty dollars, or both; remove all nuisances in the public streets, parks, and highways; arrest all street mendicants and beggars; provide proper police attendance at fires; assist,

¹A recent and authoritative book on the American police is Raymond B. Fosdick's "American Police System." In connection with this, "European Police Systems," by the same author, should also be studied. L. F. Fuld's "Police Administration" is a critical study of police organizations in the United States and abroad. William McAdoo, *Guarding a Great City*, describes the organization and operation of the New York police system, of which he was commissioner. W. B. Munro, *Principles and Methods of Municipal Administration*, chap. vii, Goodnow and Bates, *Municipal Government*, chap. xi, and J. A. Fairlie, *Municipal Administration*, chap. viii, give shorter accounts of the same problems.

²Sect. 315.

advise, and protect emigrants, strangers, and travelers in public streets, at steamboat and ship landings, and at railroad stations; carefully observe and inspect all places of public amusement, all places of business having excise or other licenses to carry on any business; all houses of ill-fame or prostitution, and houses where common prostitutes resort or reside; all lottery offices, policy shops, and places where lottery tickets or lottery policies are sold or offered for sale; all gambling-houses, cock-pits, rat-pits, and public common dance-houses, and to repress and restrain all unlawful and disorderly conduct or practices therein; enforce and prevent the violation of all laws and ordinances in force in said city; and for these purposes, to arrest all persons guilty of violating any law or ordinance for the suppression or punishment of crimes or offenses.

European
and
American
conceptions
of police
functions

The duties just described are those generally performed by the police force the world over. In Europe, moreover, the police have the additional function of exercising close surveillance over both the inhabitants and the visitors of a city. In one sense this increases their duties, but from another point of view it makes the detection of criminals easier, since through the elaborate system of registration the police of the European countries may put their hands upon almost anyone at almost all times. In America the police have a more difficult task than is assigned to the police in Europe. This arises from the failure on the part of the legislative bodies in the United States to distinguish clearly between vice and crime. This is well-expressed in the following words:

It is too commonly believed in this country that once we have determined that an action is vicious, it necessarily follows that such action should be criminally punished. Whether an action is believed to be vicious or not depends, of course, upon a variety of things. But whatever the criterion of morality or immorality may be, the public belief in its immoral character is the result of the standards, somewhat subjective in character, of the majority of individual men. Now, whether an act shall be a crime or not should be dependent simply upon the question, Is it socially expedient to attempt to punish such act criminally? The morality of the act has little, if anything, to do with the matter. An action may, from the viewpoint of subjective individual morality, be absolutely innocent, and yet it may properly be a crime. Thus from the individualistic moral point of

view, it is an innocent action for a man to drive on either side of a city street. Yet the government may properly determine quite arbitrarily that it shall be a crime to drive on either the left or the right side of the street. Again, an action may be from the viewpoint of individualistic morality most vicious in character. But its viciousness may not result in making it a crime. Mere sensual indulgence in any form is vicious. But the mere fact of its viciousness is not sufficient to justify the government in making it criminal.

The only justification for punishing an act criminally is that the welfare of society requires that it should be so punished. Now it may well be that the difficulty of punishing some particular act may be so great, and the procedure necessary to secure its punishment may be so arbitrary, that the social welfare is less subserved by the attempt to punish it than it is by leaving it alone, no matter how vicious it may be. By letting it alone the people in their governmental organization do not countenance it. They simply declare it is inexpedient to attempt to punish it criminally. Take, for example, the case of gambling. The state may determine that it is inexpedient to make mere gambling an offense. This is the general rule in the United States as to private gambling. No one commits a crime in gambling. The state does, however, say that it will not permit its power to be exercised to recover a gambling debt. The state often says also that keeping a public gambling table is a crime. It does so because it believes, or the majority of the people believe, that keeping such a gambling table has such bad effects on society that it may properly be made a crime. But suppose, after numerous and persistent efforts to suppress the keeping of public gambling tables the state came to the conclusion that these attempts led, through the corruption of the police force and the arbitrary invasion of the right of personal liberty, to a greater social harm than the keeping of gambling tables in such a way that no scandal or disorder was caused thereby—suppose, then, that it ceased to attempt to punish criminally the mere keeping of such a table, it could not fairly be said that it countenanced gambling.¹

The difficulties arising from this confusion of vice and crime are accentuated in the United States by the diverse character of the city populations. In European cities the populations are more homogeneous, and public opinion is more generally agreed on standards of conduct. In the large cities of the United States, as has been seen, a large percentage of the population is

Difficulties
of American
police ad-
ministration

¹Goodnow and Bates, *Municipal Government*, pp. 291-292.

foreign-born and a still greater percentage comes of foreign-born parents. These groups are by no means agreed as to the standards of moral conduct, particularly in the field of personal behavior. This divergence of standards is still further emphasized when it is remembered that many of the laws regulating conduct are framed not by the lawmaking body of the city council, but are imposed upon the city by the state legislature, in which the rural element has a large and sometimes a decisive voice. To add to these difficulties, party politics all too frequently control to a greater or less extent police action and sometimes the enforcement of municipal ordinances and state laws. Sometimes certain interests acting through party organizations obtain police protection or immunity from police prosecution for their own advantage contrary to the formal law. Thus, in the United States the organized police force of a great city is not infrequently called upon to enforce laws which a large part of the population opposes and to regulate personal conduct according to standards which are not accepted. Moreover, their action is constantly being hampered by the influence which political parties and leaders are able to wield.

Develop-
ment of the
police in
the United
States

During the colonial era the police functions were usually intrusted to unpaid watchmen and constables. The householders in some places were required either to perform watch duty or to furnish a substitute, and even until the middle of the nineteenth century there were few paid officials in any American city.¹ In 1844 New York provided for a single body of police consisting of eight hundred men under a chief appointed by the mayor with the consent of the council, with captains and officers appointed annually from the wards. This was altered in 1853, and the mayor, recorder, and city judge were established as a board of police commissioners with full power to appoint the members of the force, who held their positions during good behavior. Other cities followed the example of New York: in 1850 Philadelphia organized a police force of eight hundred; in 1854 the Boston police force was established, and in 1857 that of Baltimore. The organization and the

¹ J. A. Fairlie, *Municipal Administration*, pp. 132-134; Goodnow and Bates, *Municipal Government*, pp. 280-282.

uniforms were largely copied from the London system, and the movement rapidly extended to all the principal cities in the United States. By and large the small cities do not have a force proportionately as large as the larger cities, nor is such a force necessary. The need for police administration increases progressively with the size of the city. The largest cities in the United States, however, have smaller police forces in proportion to their population than do the cities of Great Britain or the Continent.¹

Until the middle of the nineteenth century the city police were considered purely local officers and entirely under the control of the city authorities, even though the courts have held that "police officers can in no sense be regarded as agents or servants of the city. Their duties are of a public nature."² The decline of the city councils and their increasing inefficiency led the state to undertake in many cities the supervision if not the actual control of the police force. Thus, at one time or another the control of the city police was taken entirely out of the hands of the city government in Baltimore, Boston, Chicago, Cleveland, Detroit, New York, St. Louis, and many smaller cities. Of the largest cities only Baltimore, Boston, and St. Louis are still subject to state control in police affairs. There are many arguments in favor of the state control of police. The first and most obvious is that the police officials are engaged in enforcing state laws and are regarded by the courts as state officials. A corrupt or inefficient police force may render nugatory a state law in a large city. Again, it has been claimed, with considerable reason, that state administration is more efficient and less corrupt than municipal administration. This is true in some states, but its truth is by no means universal. It must be admitted, however, that in the three large cities now under state control the police administration is far more efficient than it was in the days when the city council had full authority. State control, however, is not popular. It violates the principle of home rule for cities; it is ordinarily more expensive; and the fact that the preventive and repressive

State versus
local control
of the police

¹For table see W. B. Munro, *Principles and Methods of Municipal Administration*, p. 282.

²*Buttrick v. City of Lowell*, 1 Allen (Mass.) 172 (1861).

functions of the police are beyond the authority of the city council, which is called upon to appropriate money for their support, not infrequently rouses bitter opposition. Although there is little evidence which would point to the extension of state control of police forces, it has been seen that there is a decided tendency to establish state police and to appoint many state officers exercising police functions within the cities.¹

Organiza-
of the police
department:
(1) the
board

There are two main types of police organization in cities in the United States—the board and a single commissioner. At one time the board organization was extremely popular, but little can be said in its favor. Among the politicians it still retains some of its popularity, for it gives the opportunity to divide or share the patronage and to make political influence effective. This is true especially in the so-called bipartisan board. If in any department the city government demands unity of authority and dispatch, it is in the police department.

(2) The com-
missioner

Hence the general tendency is toward a police commissioner and away from a board. The most successful commissioners have not been drawn from the police department itself, but have been laymen possessed of considerable administrative and executive ability who have brought to their task a fresh point of view. This is to be expected when it is remembered that the functions and duties of the police are constantly being extended. Professional control is found in the smaller cities, which have not adopted the commission form of government. There the direction of the police is nominally under a committee of the city council, but the actual control is in the chief of police.

The chief of
police

The chief of police is practically always a professional, usually promoted from the ranks, and in many cities under the regulations of the civil-service commission. In the largest cities he is the means of communication between the commissioner or board and the lesser members of the department. He is not a policy-determining official, but his duties are mainly executive and administrative, and he is responsible for the discipline and efficiency of the force. In smaller cities, as has been pointed out, the chief of police frequently is called upon

¹See page 171.

to exercise the functions of the commission, for which he is too often unqualified, because he brings to his task the point of view of the professional officer.

In practically every city there is a police captain, who has charge of the police station during certain hours of the day and is responsible for the discipline of the patrolmen in his precinct. His position is extremely important, as he not only gives the tone to the force in his district but also is the person before whom as a rule first offenders are brought. He should have great firmness in dealing with his subordinates and equal firmness and discretion in directing the subordinates in their dealings with the public. In the largest cities the precincts, with their station houses and captains, are frequently grouped into inspection districts under the supervision of a higher officer known as the inspector, who is the medium of communication between the commissioner, the chief of police, and the precincts and who supervises and overlooks the police work in his district. In many cities there is a grade below the captain—the police lieutenants, who take charge of the station during the captain's absence and share with him the responsibility for the administration of the district. At each station, in most cities, there are several police sergeants. Where there are no lieutenants the sergeants take charge during the captain's absence. In the larger cities, however, their duties are chiefly on the streets, supervising the work of the patrolmen and seeing that their precinct is properly policed.

Other police
officials:
(1) Police
captains

(2) The
inspector

(3) Lieu-
tenants

(4) Ser-
geants

The mainstay of any police department consists of the patrolmen—the officers on the streets. They are the police officials with whom the general public comes in contact, since in many instances they are the only representatives of the government whom large classes of the population know. In many cases their word is law. Their duties, as has been seen, are manifold and require great tact, courage, and wisdom in their performance. Not infrequently a skillful patrolman can change the whole tone of a block or section of the city by his action. In most cities the patrolmen are now appointed as the result of competitive examinations and hold office during good behavior. These competitive examinations have frequently been

(5) Patrol-
men

criticized as poor tests of the characteristics most needed in policemen; that is, courage, discretion, cool-headedness. Few of these qualities can be ascertained by written examinations, but when these are supplemented, as is frequently the case, by rigorous physical examinations the most unfit applicants can be winnowed out. The civil-service examinations do prevent the old type of inefficient political appointees and in many instances have given a splendid force of men. The tenure of the police officer is generally during good behavior, and since he is under the protection of the civil-service regulations he can be removed only for cause, which in some cities¹ must be capable of judicial proof. But in many cities he is removable by the appointing power on a hearing. Promotion in many police departments depends upon competitive examinations set by the civil-service commission coupled with the officer's record. This department is one of the few in city administration for which pensions have been provided. Thus, in many cities the policemen—in distinction from the employees of other departments—enter upon a career which provides for promotion according to merit, with increasing compensation, and a pension upon retirement.

Police
schools

On the Continent and in London special schools for the training of policemen are established, and on the Continent the force is generally recruited from the petty officers of the army. In London the effort is made to obtain the recruits from the country. Many American cities have a training course for police recruits, and New York maintains a regular school similar to those abroad.

Expenditure
on police
departments

In the cities of over 30,000 population the expenditure on the police departments in 1919 was \$80,917,027. This amount was exceeded only by the amount spent for schools. The per-capita cost of the police departments of these cities was \$2.33. Cities having a population of over 500,000 expended \$44,699,180, or \$3 per capita. Of these cities, as might be expected, New York spent the greatest amount—\$18,115,948. But Boston, which expended only \$2,768,949, had the highest per-capita expense of all (\$3.75). The smallest amount expended was by Los Angeles (\$1,067,779), and the smallest

¹In New York, for example.

per-capita expense was in Cleveland (\$1.79). In cities having a population of between 300,000 and 500,000 Buffalo spent the largest amount (\$1,566,912). It also had the highest per-capita expense (\$3.15). The smallest cost was in New Orleans (\$518,394), which also had the smallest per-capita expense.¹

2. *The Fire Department*

The loss in lives and property as the result of fire is enormous in the United States.² It is estimated that in the ten years between 1909 and 1919 more than \$2,500,000,000 worth of property was destroyed by fire; while in New York City alone, during the same period, more than \$100,000,000 worth was so destroyed. This loss of property is sheer waste, which falls not simply upon the owner of the property but is distributed throughout the community and shared by everyone living in it. The loss of life is also appalling.³ It is estimated that between the years 1906 and 1916 thirty thousand people perished and nearly twice as many were seriously maimed. Not only are the fire losses enormous in total, but they are greater per capita in the United States as a whole than in any other country, and the per-capita loss in cities is greater in the United States than in European cities.⁴ It is thus evident that

Fire losses
in the
United
States

¹See Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), p. 204.

²W. B. Munro, *Principles and Methods of Municipal Administration*, chap. viii, and J. A. Fairlie, *Municipal Administration*, chap. viii.

³"If all the buildings burned in the United States in any single year were placed side by side they would make an avenue of desolation all the way from Chicago to New York, and at every three-quarters of a mile someone would be found burned to death." In the past ten years enough buildings have been burned in this country to line a boulevard reaching from ocean to ocean. In the same decade, moreover, fire has destroyed thirty thousand lives and maimed more than twice as many persons. It has cost us more in killed, wounded, and missing than Antietam and Gettysburg put together.—W. B. Munro, *Principles and Methods of Municipal Administration*, p. 319.

⁴The fire loss in Chicago was ten times that of Berlin. The per-capita loss in some years in Cincinnati has been more than five dollars, while in Frankfort on the Main, a city of about the same size, it is about forty cents. See W. B. Munro, *Principles and Methods of Municipal Administration*, p. 317.

protection against fire is a necessary function of municipal administration in guarding the safety of its citizens.

**Fire
prevention**

One reason why the loss of fire is less in England and on the Continent than in the United States is because far more effort is expended on fire prevention. In Greater New York there are several times as many fires as there are in Greater London, although London has a larger population and a greater area. This is in part due to the character of buildings both in England and on the Continent; owing to the high price of wood, construction abroad is generally of brick, stone, or some fire-resisting material, and the use of wood is reduced to a minimum. As a result, although there are many fires in London and in continental cities, they seldom gain much headway and are easily confined to the premises in which they start. A second reason for the smaller number of fires abroad is to be found in the laws which penalize negligence and make the tenant or owner of the building liable for damages to others from fires which have started in their premises. More care, moreover, is taken in determining the cause of fires and in fixing the responsibility. In the United States the work of fire prevention has been sacrificed for the work of fire protection. Nevertheless, beginning with 1911, in Pennsylvania, several states made provisions for a centralized bureau for fire protection, and both state and city are becoming increasingly alive to the necessity of education and investigation in this field.

**Methods
of fire
prevention:
(1) Fire
limits**

The most common method of fire prevention is to establish fire limits; that is, zones or sections of the city within which only fireproof or fire-resisting buildings may be erected. The laws do not require the destruction of old wooden buildings, but simply provide that all new buildings must be constructed of fire-resisting materials; and if extensive changes are made in old buildings, these alterations shall conform with certain regulations. Closely parallel to and a part of the method of prescribing fire limits is the classification of the construction of buildings. Buildings are rated and their construction prescribed in certain classes, dependent upon their fire-resisting possibilities. In buildings of the first class fire-resisting material must be used throughout, and the use of wood is permitted

**(2) Fire-
resisting
construction**

only for floor surfacing, trimmings, windows, and doors. In second-class construction, which is ordinarily applied to industrial and mercantile buildings outside the danger zone, the floors, roofs, and partitions may be of wood, although the wooden roof must be covered with some fire-resisting material. In buildings of the third class, which would include private dwellings and small apartment or tenement houses, the use of wood is generally allowed throughout, although the roof should be covered with fire-resisting material, and fire stops or walls may be required between the different apartments.

Fire prevention is also obtained by requiring a special method of construction based upon the use to which the building is to be put. Thus, there is generally a special set of regulations governing theaters, which require an asbestos curtain, frequent hose outlets, and sometimes a sprinkler system. For factories special construction is also demanded, varying from the so-called fireproof construction, which provides for water-tight floors, fire-doors, shutters of metal, and windows of wired glass, to the so-called slow-burning construction, which depends for its protection on the size of the wooden beams and the frequency of fire stops. In devising rules for fire protection for tenements a serious economic question arises. If the regulations require that tenements shall be absolutely fireproof, building will be discouraged, crowded and improper housing conditions perpetuated, and the rent raised to an almost prohibitive figure for the tenants. Investigations have proved that the majority of danger spots in tenement houses are the cellars, hallways, and roofs. Thus a proper and perhaps not inadequate code would require that the cellar and first floor of a tenement house be practically fireproof, that the hallways be specially protected from fire connection with the living rooms, and that the roof be of fire-resisting material.

During the colonial period protection against fire was undertaken in villages and small towns and even cities by volunteer companies. The members were supposed to equip themselves with buckets, axes, and other fire-fighting implements. At about the beginning of the eighteenth century these volunteer companies began to be equipped with pumping engines, the

Special
methods
of fire
prevention
governing
(1) Theaters
(2) Factories

(3) Tenements

Fire
protection

first one being ordered by Boston in 1702.¹ Although these engines were sometimes paid for by the city, they were generally manned and operated by volunteers. The first steam fire-engine was purchased by Cincinnati in 1853, and shortly afterwards the system of volunteer companies gave way to the organized force, appointed and paid by the city.² Since 1870 there has been a steady increase of paid fire-fighting departments, until almost every city has such an organization, the nucleus of which consists of permanent employees.

Organiza-
tion of
the fire
department

In the organization of the fire department both the board type and the commissioner type are found. Boston, Chicago, and New York have adopted the commissioner plan, and in commission-governed cities the fire department is usually under the commissioner in charge of public safety. Of the large cities Baltimore, Detroit, and San Francisco have the board type of organization. In all the cities mentioned the commissions or the boards are appointed by the mayor. Like the police department, the fire department should be under a single head, but in smaller cities the expense makes the board organization more popular. Below the commissioner or board is usually a chief, who has general charge of the discipline and management of the force.

Fire
companies

Fire companies generally consist of a captain and from ten to fourteen men, who are stationed in a fire-house equipped with a certain amount of fire-fighting apparatus. Experience has shown that the best method of obtaining firemen is by competitive tests under the civil-service commission, together with a searching physical examination. In addition, Boston, Chicago, New York, and Philadelphia maintain special schools for the training of firemen in the use of their fire-fighting appliances and in the methods of extinguishing fires. As in the case of the police, employment in the fire department is considered almost permanent, promotions are provided far too often as the result of mere length of service, and pensions are granted at the age of retirement.

The modern appliances for fire-fighting may be classified as fixed and portable. The fixed appliances consist of the water

¹See J. A. Fairlie, *Municipal Administration*, pp. 151-157.

²Baltimore, 1858; Boston, 1860; New York, 1865; Philadelphia, 1871.

mains laid in the streets and, in particular, the hydrants, to which the fire-hose can be attached. It is of vital importance that the hydrants should be frequently inspected, that their connections should be of a type affording no difficulty in attaching the hose, and, in northern winters, that great precaution should be taken to prevent their freezing. Another kind of permanent fire-fighting apparatus is the fire-tank and standpipes which are placed in factories and large buildings. By maintaining on the roof of the building a large tank filled with water and attached to various standpipes running throughout the building, the firemen may find on almost any floor sufficient pressure to deal with a fire on that particular floor. A very successful permanent apparatus for extinguishing incipient fires is the sprinkler system. This consists of a network of pipes suspended below the ceiling; to it are attached outlets sealed with a metal composition which fuses at a comparatively low temperature. The sprinkler system may be regarded as a means both of preventing and of extinguishing fires. It is designed to put out any incipient fire before it has spread to a dangerous degree. To be efficient every portion of the building should be within the radius of some sprinkler outlet, and cellars, closets, and stairways must be particularly guarded. A necessary part of the sprinkler system is the automatic alarm, which will warn the nearest fire-house when the sprinkler system begins operating. This is necessary because in certain buildings almost as much damage to the stock may be done by water as by fire. A serious limitation of the sprinkling system is found in northern cities, where the temperature in store-houses is below freezing. Although many attempts have been made to remedy this defect, they are all complicated and perhaps a little uncertain in operation.

Portable fire-fighting apparatus centers around the engine. Until recently this was a horse-drawn, steam-pump, and pressure engine. Within recent years, however, the engines have been commonly motorized and the internal-combustion engine substituted for the steam-pump and pressure engine. The purpose of these engines is to take the water at the hydrants from the mains and deliver it at the nozzle of the hose with sufficient

Fire-
fighting
appliances

Portable
fire-fighting
apparatus

pressure to enable the firemen to reach the fire at a distance of from sixty to eighty feet. Inseparable from the fire-engine is the hose wagon, which carries the hose used in fighting a fire. In addition to the hose, the wagon carries its proportion of firemen, axes, and hand extinguishers. In some fire stations a hook-and-ladder company is added. This operates a large truck carrying ladders of different lengths and often an extension ladder which is capable of reaching to a height of eighty feet. Beyond this distance, for the lofty office buildings, the firemen must depend upon scaling-ladders, which are short ladders affixed to the window sills at the different stories. In order to deal with the high buildings in some of our cities fire-towers have been devised; these are extension frameworks which can be elevated to about eighty feet, from the top of which a turret nozzle throws a stream of water. Even this is limited in its effectiveness to less than two hundred feet. Hence the protection of upper stories of lofty buildings must depend upon fire-resisting materials and the use of standpipes, so that the fire may be fought on each separate floor. In seaports fire-boats are not uncommonly found. These are tugs of light draft carrying very powerful engines and manned by a fire company. These have proved of great value in fighting fires along the water front as well as in dealing with fires on boats anchored in the harbor.

Cost of the
fire depart-
ment

The one hundred and forty-six cities having a population of over 30,000 spent, in 1919, \$64,540,941 on their fire departments. This total was exceeded only by the expenses of schools, general government, the police department, and highways.¹ The amount has been and is steadily increasing. Of the cities with a population of over 500,000 New York spent the greatest amount (\$10,632,079) and Baltimore the least (\$962,885). Boston, however, expended more per capita (\$2.74), Pittsburgh coming next, and Philadelphia spending the least (\$1.20). The per-capita expenses of cities between 300,000 and 500,000 varied from that of San Francisco (\$3.41) to the \$1.57 which was spent by New Orleans.²

¹ Department of Commerce, Bureau of the Census, Financial Statistics of Cities (1919), pp. 204-205.

²Ibid.

3. *The Health Department*

Attempts to protect public health began during the eighteenth century in the Atlantic seaports, chiefly through the establishment of quarantines against infectious and contagious diseases. Originally the colonial assembly exercised this power, but the ports of Boston, New York, and Philadelphia soon found it necessary to establish local boards of health. These local boards, however, were not permanent, and their action was aimed in general against such diseases as cholera or smallpox. Moreover, few preventive measures were taken, and the board of health frequently did not begin to operate until pestilence was actually at hand. The modern system of sanitary inspection began in 1866 with the establishment of the Metropolitan Board of Health for New York, Brooklyn, and the vicinity.¹ Chicago followed in 1867, Boston in 1872, and New Orleans in 1873. Since that time the number of boards of health has rapidly extended until practically every city has a board or health officer appointed by the municipal authorities, and in cities of over 200,000 there is a considerable corps of sanitary inspectors and agents enforcing health regulations or attempting to prevent disease.

Develop-
ment of
city organi-
zation for
the preser-
vation of
health

The powers of the sanitary police are determined in part by statute law and by the common law as interpreted in the American courts.² This depends upon the common law of nuisances. What constitutes a nuisance may in the original instance be determined by the legislature subject to judicial review. The general tendency of the courts, however, is to allow the legislature considerable latitude in the determination of what are nuisances, particularly those which affect the public health. Originally a nuisance could be abated only as the result of a criminal proceeding, which was a long and uncertain method. The common-law right to abate a nuisance—which is possessed by every citizen and official alike—was seldom invoked, because it involved the person so invoking it in the risk of a suit for damages in case the court should declare

Legal basis
of sanitary
police
powers

¹See J. A. Fairlie, *Municipal Administration*, pp. 165-175.

²Goodnow and Bates, *Municipal Government*, pp. 302-304.

the thing abated not to be a nuisance. About the middle of the nineteenth century, however, it was decided by the New York courts that a hearing and trial before a board of health constituted a judicial proceeding and that the board itself could declare a thing a nuisance and order it abated. Nevertheless, as a rule boards of health proceed without preliminary hearings and direct the abatement of the nuisance, but this action is subject to revision on a collateral judicial action like a suit for damages or an injunction.

Organiza-
tion of the
health
department

In most municipalities the health department is organized as a board. There are good reasons for adopting this type of organization. The department is frequently called upon to make ordinances and rules, and public opinion is probably better satisfied if these are the results of the deliberations of several individuals rather than the dicta of a single commissioner. Nevertheless, in some of our largest cities—New York, for example—the department of health is under a single commissioner. Because of the relation of the health department to collateral departments, like police, street-cleaning, or (in the case of a seaport), the port authorities, ex-officio boards have been tried in which the heads of these various departments shall serve. Wherever the board type of organization is adopted, an executive expert must be employed even in the smallest cities. This health officer or agent of the board of health acts in a threefold capacity. It is surmised that in many instances he is the source, by means of advice given to the board of health, of the ordinances and regulations which the board promulgates. He acts, moreover, as the executive agent of the board in carrying out these regulations. Finally, in many cities he is the inspector—in the smallest sometimes the sole inspector—of the sanitary conditions which the boards of health attempt to supervise. In large cities, however, the board of health supervises the work of a large number of sanitary inspectors and agents—often hundreds in the largest cities.

Relations
of the health
department
to other
departments

The health of the city is dependent upon many departments over which the department of health may have no control. Thus the water, the sewer, and the street-cleaning departments, together with those charged with the removal of the city's

waste, are vital factors in the preservation of the health of the city; but, as will be seen, these departments operate almost independently of the health department and sometimes not in harmony with it. The duties of these collateral departments are so manifold and important, and the departments themselves already so large, that it would be impossible to combine them under the board of health without decreasing both its administrative efficiency and that of these collateral departments as well.

Almost universally municipal boards of health are directed to inspect and abate unsanitary conditions which may prove detrimental to the health, comfort, and convenience of the citizens. Ordinarily this includes supervision over the removal of the garbage of the city. In some instances this is actually performed by subordinates of the board of health, but where it is conducted by private contract, or by another department of the city administration, the board of health exercises supervisory power. A special control is exerted over plumbing and house drainage in various ways—by the formulation of certain regulations and by the examining and licensing of plumbers and by the inspection of their work. In some cities the use of soft coal is prohibited or, if allowed, smoke consumers must be used. Certain trades, particularly slaughterhouses and rendering plants, are subject to special inspection and investigation. General factory inspection to determine the hygienic conditions of factories is sometimes performed by the board of health and sometimes by the department of labor or factory or building inspection. Boards of health are commonly called upon to examine the condition of the water supply and the disposal of the sewage. In like manner other departments are subject to the supervision of the board of health. The inspection of food in order to prevent disease is becoming more and more important, especially in the case of the milk supply. Practically every city is equipped with at least one inspector of milk and the larger cities with a more adequate number. State laws are constantly being passed requiring the inspection of certain food products, sometimes carried on by independent state authorities, but in many cities by agents of the board of health.

Functions
of the board
of health:

(1) Precau-
tionary
action

[Vaccination and inoculation]

Laws requiring vaccination for smallpox are found as early as the beginning of the nineteenth century. In the United States the most effective enforcement of these laws is in connection with the school regulations, which prohibit the attendance of children at the schools unless vaccinated. This is now being extended to other diseases; for example, in New York the board of health is immunizing all children to diphtheria.

(2) Management and control of infectious diseases

One of the important functions of the city board of health is the discovery of infectious diseases. Before 1880 smallpox was the only infectious disease which was required to be reported. The number has constantly been increased since then, until it includes, in all cities, smallpox, diphtheria, scarlet fever, and typhoid fever. In rarer instances regulations require the reporting of measles, cerebrospinal meningitis, yellow fever, whooping cough, and German measles. Local boards of health, however, may by regulation require physicians to report the presence of any disease. Until very recently tuberculosis, which was recognized as communicable, was required to be reported only in New York City. The tendency now is to require notification of most communicable or dangerous diseases.¹ Until very recently few cities were equipped to discover the presence of these diseases. Dependence was had upon the local physician; but more lately the larger cities have a corps of inspectors, and frequent inspection of school children by the school physician or school nurse is proving to be an excellent method of discovering the presence of infectious or dangerous disease. Municipal laboratories are maintained in a few cities for the investigation of these diseases through the testing and examination of bacteria. More commonly, however, this is a function undertaken by the state authorities.

[Treatment of communicable diseases]

Until a comparatively recent time few cities could do more than to quarantine in his dwelling the patient suffering from infectious disease. This quarantine was difficult to enforce and not particularly effective in large cities. A single exception is smallpox, for which some cities maintain a special hospital known as the pesthouse. In later years, however, state laws have required cities to maintain isolation hospitals,

¹See M. J. Rosenau, *Preventive Medicine and Hygiene*, pp. 1004-1005.

where patients suffering from dangerous infectious diseases may be treated. By state law cities and counties are in some states required to provide hospitals or sanatoriums for persons suffering from tuberculosis.¹ It is a burning issue as to whether public authorities should undertake treatment of non-communicable diseases.

Very little is done by the cities in the way of research concerning public health. Not all states even require the cities to compile adequate vital statistics, this being usually undertaken by the state authorities, and in only the largest cities is there much attempt at the examination of specimens and the determination of the causes of diseases. It is true that almost every city maintains some facilities for testing certain food products, but this can hardly be classified as research. Research in public health is more frequently carried on by means of the state or federal authorities. (3) Research

The state board of health in some states conducts a statewide campaign for education in matters of public health. In a few cities, however, this is done largely in connection with the school system. Special instruction is given to the children concerning the use of alcohol and narcotics, and the simple elements of personal hygiene are taught. But whether these functions should be performed by the department of education rather than by the board of health is a much-debated question. (4) Education

In 1919, in the cities having more than 30,000 population, over \$20,000,000 was spent in health conservation and over \$60,000,000 in sanitation or the promotion of cleanliness.² More than \$5,000,000 was spent for the prevention of tuberculosis, more than \$4,000,000 for the treatment of communicable diseases in hospitals, and more than \$2,000,000 in treating other communicable diseases. Medical work for school children required over \$1,800,000; milk and dairy control, \$921,000; and other food regulation, \$814,000.³ The per-capita expense Expenditure in health conservation

¹Treatment is also undertaken in some cities for malaria, hookworm, venereal diseases, diseases of infancy, and rabies.

²Department of Commerce, Bureau of the Census, Financial Statistics of Cities (1919), pp. 204-405.

³Ibid. pp. 183-184.

for the conservation of public health was only 58 cents throughout the country. But this varied in cities having a population of more than 500,000, from Baltimore, where the per-capita expense was 39 cents, to Pittsburgh, where the expense was 97 cents. In cities of the next class the per-capita expense varied from \$1.44 in Buffalo to 21 cents in Indianapolis.

4. *The Building Department*

Building regulations

Building regulations have been adopted in many cities. Their administration falls between the fire and sanitary regulations just discussed and the city-planning movement, which will be considered in the next chapter. The purpose of building regulations is, first, for protection from fire; second, for stability of construction; third, for sanitary conditions; and, fourth, for the satisfaction of considerations of convenience or beauty. In connection with the building regulations some cities have adopted stringent housing laws which even determine the amount of cubic feet of air per person in rooms, particularly in factories. The department of health is vitally associated with the building department in enforcing the sanitary and plumbing regulations. The building department is also called upon to consider the plans for future buildings in order to see that they satisfy the requirements of the fire department. Thus, in most cities a license to build or to make serious alterations is required, and in order to obtain this detailed plans must be submitted. In all cities, theoretically, and in the largest cities, actually, inspectors visit the buildings frequently for the purpose of seeing that the work is progressing in accordance with the accepted plans.

CHAPTER XXVIII

MUNICIPAL ADMINISTRATION. CONVENIENCE

CITY PLANNING, STREETS, WATER, WASTES, SEWAGE, PUBLIC UTILITIES

1. *City Planning*

In its widest sense city planning includes the provision for the city's health, convenience, beauty, and even morals.¹ City planning deals with both the present and the future. It requires not only accurate knowledge of the exact present conditions but considerable foresight in devising for future developments. Plans for the city's convenience include the layout of the streets, with the determination of their width; the relation of the water supply and the sewerage to the present and future growth of the city; the location of public buildings, railroad terminals, and water plants as well as easy methods of communication for the city's convenience. An adequate plan for developing the city must contain provisions for the city's health. The procuring of an adequate water supply and the distribution of the city's waste should be studied not only from the point of view of the city's convenience but from that of the health of its citizens. Park systems and recreation centers are obvious examples of provisions for the city's health. But even more vital than these is the proper determination of the system of city streets and alleyways. Experience with "back-yard tenements" and "noisome alleys," which have been allowed to develop because of lack of foresight in laying out the streets

¹The literature on city planning is large and varied. N. P. Lewis's "The Planning of the Modern City" and "City Planning," by John Nolen (ed.), are examples of extended works. W. B. Munro, *Principles and Methods of Municipal Administration*, chap. i. gives a brief account, with references to some of the standard authorities. A briefer account is found in Goodnow and Bates, *Municipal Administration*, pp. 360-370.

and determining the size of the building lots, are all too common in the history of city slums. Of great importance is the plan for the beautification of the city. It is sometimes said that mean streets develop mean people. An adequate city plan should avoid mean streets, should take advantage of the natural physical features of the city, and should plan for squares and parks, which at some future time might become beauty centers. Closely connected with this are the restrictions which the city-planning authorities should devise for the erection of buildings, the height and character of their construction, etc. Limitations on the use of signboards and advertising are also legitimate functions for the planning authorities to deal with. Finally, a city plan should not neglect the sociological conditions of the city. A little has been done along this line in zoning systems, which attempt to restrict certain types of business and factories to definite localities and to provide for residence districts; while some European cities have gone even further and determine the areas in which theaters and amusement halls may be located. All these things have an effect upon the moral development of the citizens. Proper home life and suitable upbringing of children cannot be obtained in the middle of a crowded retail-business center, while the erection of tenement houses or the building of factories, loft-buildings, or garages may ruin a section of the city devoted to small homes. A schoolhouse and a railroad station are bad neighbors to each other, and, unless watched, an inchoate slum may develop in what was the garden of a decayed mansion.

City
planning
in America

Although these are the widest ideals of city planning, few or no cities in the United States have realized them. In a few cases only has the mere physical plan of the city been determined, and most cities have been allowed to develop in a hit-or-miss fashion. Exception should be noted in the cases of Philadelphia, Washington, and New York above Fourteenth Street, but even in these cases little has been done beyond planning for the mere convenience and physical layout of the city. The city-planning movement in American cities is thus dealing with accomplished facts and attempting a process of reconstruction in order to remedy the errors of past generations and,

possibly in the suburbs, to provide for the adequate growth of the city along proper lines. Up to about 1910 city planning was of the most casual character. Occasionally different cities appointed temporary commissioners to survey and plan for certain special features. Many small cities had improvement boards, and larger cities had park commissions; but, after all, these were dealing with isolated problems and their action was uncertain and seldom consistent. In 1907 Hartford, Connecticut, established the first permanent planning commission, and since that time the movement has spread rapidly and widely throughout the country. In some states—Massachusetts, for example—the city government is compelled by state statute to appoint a planning board or commission.

Planning boards and commissions in the United States are composed in three different ways. One type consists of citizens who have no connection with the city government; this board is more or less a permanent body, being subject to partial renewal each year. A second type is composed of city officials, generally members of the city council, and thus is less permanent in character and more liable to political influence and changes. The third type represents a combination of the two. The first variety of city-planning board has an advantage in that it is removed from the influence of municipal politics and may secure the services of men of outstanding ability. Its chief difficulty is that it has no formal connection with the city council, which makes the appropriations and passes the ordinances necessary to realize the aims of the planning board. The third kind of planning board, which contains certain representatives of the city government, should theoretically be the most efficient. It possesses the advantages of the first type and adds the representatives of the city government, who may be able to influence the council to carry out the plans. In practically all cities the powers of the planning board are merely advisory. They are frequently given an appropriation (generally an inadequate one) to make surveys or gather material, but they lack the power to realize these plans and to put them into effect. This is probably as it should be, since the political authorities of the city rightly determine the policy and control the purse.

Composition
and powers
of planning
boards

Basis of a
city plan

The basis of a city plan is an accurate and painstaking survey. This should include not simply the physical layout of the city but the location of all water pipes and sewer pipes, and underground conduits, the accurate determination of street boundaries, and so forth. Experience has shown that few cities possess in their archives such a complete and painstaking survey.¹ In addition to the physical survey, an economic survey should be made of the character of the city's industries and the city's resources. A social survey should also be compiled. In fact, the archives of a city-planning commission should contain evidence of all sorts on all problems which city planning in its widest sense might involve. Such a survey is absolutely necessary before any proper and adequate plans can be made; it is never complete but must constantly be kept up to date. Even from such a careful survey, the making of plans for future development involves a considerable element of chance and gives opportunity for use of foresight in the highest degree.

Difficulties
of city
planning :
(1) Consti-
tutional
and legal

In the United States the city-planning commissions face many difficulties. The first of these is constitutional and legal. The Constitution of the United States and constitutions of the various states contain many limitations upon the taking of private property. Just what is a public use for which alone private property may be taken varies from state to state and from decade to decade. It is not infrequently necessary for a planning commission to secure special legislation from the state legislature in order to enable the city government to carry out its plans.

(2) Expense

A second difficulty which confronts the planning board is financial. City planning is expensive; particularly is this true in the reconstruction of streets and the remedying of mistakes made by previous generations. The taking of land to widen a narrow street, in order that it may be adequate to carry the traffic it naturally bears, is sure to involve the city in expenses far beyond the amount originally estimated. It may be entirely

¹As a result of a survey made in one district of a New England city enough untaxed land was discovered to pay in a single year for the entire survey.

possible to demonstrate the fact that a new street giving access to a terminal or water front will more than pay for itself by increasing the valuation of the property along it, besides saving an immense sum to the industries using such a street. Nevertheless the first cost is almost prohibitive.

A third difficulty which the planning board too often is forced to contend with is the inefficiency or corruption of the political bodies of the city government. The laying out or the widening of streets furnishes an opportunity for private gain which has too often been taken advantage of by members of the city government. The city government at best is a changing body; a city plan requires years to reach its complete development. Frequently one city government has reversed the action of its predecessors and has abandoned or altered a carefully-thought-out plan of development. Finally, city planning in America faces the difficulty of the rapid and unexpected development of cities. The location of new industries may call for the alteration of a carefully prepared plan, and the shifting of population may compel the abandonment of certain centers which were designed for one type of population and the extension of a business zone into a residence district.

(3) Inefficiency of city government

The expense of city planning obviously cannot be met from the annual tax levy. The usual practice in the United States is to assess the cost of a large proportion of the improvement upon the abutting property, but even this is inadequate. In many of the foreign cities which have attempted reconstruction the city governments have acquired more property than was necessary for their particular plan, and they have then attempted to sell this extra land at a value enhanced as the result of the improvement. Theoretically this is an excellent method, but practically less has been realized in every instance than was expected. It has been tried in the United States, but with little success, for political influence generally makes the city as a purchaser pay the highest price for property acquired and as a seller receive much less. This is true even where no corruption can be found, and where corrupt politics have a hold the estimated advantages of this system are never experienced by the city.

Cost of city planning

Status of
city plan-
ning in
the United
States

In spite of all these obstacles and difficulties city planning in America is being pushed forward with considerable success. Many cities are constructing civic centers, as in Cleveland; many more are providing for parks and parkways; not a few have adopted zoning systems and restrictions upon the use of private property to the advantage of the health and morals of future generations; while many cities by constructing new streets and widening old ones are attempting to remedy their former mistakes.

2. *Streets*

Importance
of city
streets

The streets are the most important portions of the city's territory and its most valuable property. The importance of the city street lies in the fact that even in old cities from 25 to 30 per cent of the city's area was to be found in the streets, while in modern cities almost 40 per cent, and in the case of Washington, D.C., 50 per cent, of the city's territory is devoted to streets. The streets themselves bear the traffic and business of the city. This means not only that they serve as means of communication for foot and vehicular traffic but also that they carry on their surface the tramways and beneath their surface the water, sewer, and gas mains, and, in the larger cities, conduits for wires, and tunnels and subways for underground transportation. Above their surface, in the older and smaller cities, are strung wires supported on poles and in some of the larger ones are found elevated tracks for transportation. The life of the city depends upon the city streets, for without them there would be no access to private property, no means of communication, no method of providing light and air for the buildings. The city streets have a great marketable value. Thus, in New York City it has been estimated that if the land of the city streets were valued on the same basis as the adjacent private property it would be worth about one tenth of the estimated value of the entire farm lands in the United States.¹ Nominally the city owns the streets, but too often cities have parted with the use of this valuable property to transportation,

¹W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 74-75.

gas, and other so-called public-utility companies, while even private individuals frequently demand the right to erect advertising structures or gasoline pumps on this most valuable of all public property.

The street or highway department in city governments is sometimes of the board type of organization and sometimes of the commissioner type. In whatever form adopted, there must be certain subordinate bureaus or divisions. The functions of the street department are many, and seldom are they all concentrated in the divisions or bureaus of any one department. The first duties which the street department faces are the planning and location of the streets. Seldom do the street departments themselves exercise this function independently of other branches of the city government. The planning board should be consulted in order that the location and character of the street may correspond to the larger city plan. The city council is seldom willing to delegate to any single department the independent power to locate a street. The acquisition of the land for the streets generally involves both legal and financial questions, which are very rarely handled by the street department. In the construction of a street—the determination of its grade, the character of the pavement, and the location of the sidewalks—the street department is vitally interested and usually alone concerned, although in many cities the engineering department performs some of these duties. In like manner the repair of the streets is ordinarily conducted by the street department, but the street-cleaning may be done either by that department or by the board of health or by an entirely independent department, as in New York. The protection of the streets against too frequent excavations by public-utility companies and private individuals, as well as by departments of the city, is another legitimate function of the street department. In whatever way the department is organized or whatever duties are given it, it must act in close correlation with other departments of the city government.

The street
department
in city gov-
ernment:
(1) Organi-
zation and
functions

Land for streets is generally acquired in one of three ways. The first method, which applies usually to new developments only, is by gift. Private owners of tracts of land which they

Acquisition
of land for
public
streets

wish to open up for development not infrequently lay out the streets and offer these to the city. This apparent generosity is not always disinterested. Great care should be taken on the part of the city authorities that the streets correspond in grade to the adjacent streets and that there are no difficulties involving great expense in the way of the extension of the city water, sewer, and lighting systems to the new development. It should always be borne in mind that when private property has once been accepted as a public street the city becomes responsible for its pavements and is financially liable for accidents which may happen thereon. A second method of acquisition of land is by means of purchase. Here the city goes into the open market and seeks to purchase private property. As a rule the city is forced to pay far more than the ordinary buyer would pay. In rare cases a group of property owners may join together and sell their land to the city at a favorable price, hoping to recoup themselves from the advantages gained by the location of the street. These cases, however, are not frequent.

Acquisition
of land
by con-
demnation
proceedings

The ordinary method by which a city is forced to acquire land for its streets is by condemnation proceedings. According to state statutes and charters the cities are allowed to exercise the right of eminent domain and acquire the property which is necessary for a public purpose. What constitutes a public purpose in the last instance is subject to judicial decision. But the courts have everywhere held that under eminent domain the city may secure the land for streets, schools and public buildings, and parks. The procedure is regulated by state statute. The city determines what land is necessary and, by the right of eminent domain, takes possession of this land. It may offer the owner compensation, and if the owner accepts the matter is ended and the transaction is like that of purchase; but where the owner is dissatisfied with the compensation offered he may sue the city in a court of law, and a jury determines what constitutes an adequate compensation for the property taken. This method is tedious and expensive, both to the city and to the property owner. Certain other difficulties arise from this method of obtaining land. It is generally a principle of law that a city may acquire property only for a

public purpose and that property acquired for one purpose cannot be used for a different one. Thus a city was formerly prevented from taking more land by condemnation proceedings than was actually necessary for the particular undertaking it had in hand. It has frequently happened that a city in securing land for a street would leave sections of lots which would be inadequate for proper buildings and make the beginning of an unsightly slum. To remedy this condition certain states have passed excess condemnation laws which allow the cities to acquire more land than is absolutely necessary. In theory this should work to the city's advantage, and the estimates often do show that the sale of the surplus land should be sufficient to pay for acquiring the lands needed for the streets. In practice this seldom results, for, as has been said, the city buys at the highest price and sells at the lowest.

The money for the acquisition of land for streets in the first instance is ordinarily raised by issuing bonds, and the interest and capital of these bonds is paid by general taxation. Actually, however, the property abutting on the new street is revalued by the assessors so that an attempt is made to compel the abutters to pay a large part of the cost of obtaining the street. There is a rather good reason for this; without doubt the building of a street through private property enhances the value of the property, inasmuch as it makes it accessible. Outside of New England the cost of making and paving the street is also usually assessed upon the adjacent property owners, although street repairs are met by the ordinary municipal budget. In New England the cost of the street pavements is commonly borne by the city, although sidewalk construction is paid for in part by assessing the abutters. In cities having over 30,000 population more than \$65,000,000 was spent for highways in 1919—an increase of more than 30 per cent¹ over the previous decade. As might be expected, New York City expended more than any other city (\$12,092,927); but Pittsburgh, spending a little more than \$2,000,000, had the greatest per-capita expense (\$3.59) of any city having a population of over 500,000. In

Cost of
streets

¹Department of Commerce, Bureau of the Census, Financial Statistics of Cities (1919), p. 78.

cities of the second class Buffalo laid out the greatest amount (\$1,725,901) and also had the highest per-capita cost (\$3.47).¹

Classifica-
tion of
streets

Streets should be classified if the problems connected with their construction, pavement, and maintenance are to be dealt with intelligently.² This classification may be started as a part of a comprehensive city plan or it may be applied to particular streets newly constructed. For example, a comprehensive city plan would provide for certain streets which should be devoted to retail trade, others for manufacturing; certain streets would be the main arteries of communication, while others would be residence streets; finally, certain streets might be devoted to drives and parks. The purpose for which a street is to be used determines in large measure its width, construction, and pavement. For illustration, a newly opened street may be regarded as a pleasure drive with a suitable construction and pavement, while at great expense a city may, through the wholesale district, open an artery to the terminals or water front which would be constructed and paved in an entirely different way. Another method by which classification is sometimes accomplished is through a zoning ordinance. By this ordinance certain sections of the city are devoted to manufacturing purposes, certain others to retail trade, others to residences. Most zoning laws as a rule regulate the height of the buildings and sometimes the proportions of the lot they may occupy. These regulations have great effect in determining the character of the street. Once the character of the streets of a city has been fixed by a zoning ordinance, they automatically become classified and the problems of construction, pavement, and maintenance are arranged more easily.

Special
problems
connected
with
streets:
(1) Width

No two classes of streets serve exactly the same purpose. Thus a street devoted largely to retail trade must be broad enough to bear at least two lines of surface cars and two lines of vehicular traffic, besides allowing for at least two lines of standing vehicles along the curbs; moreover, the sidewalks

¹ Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), p. 204.

² See W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 78-80.

must be sufficiently wide to bear the traffic of the large number of pedestrians patronizing the shops. Such a street presents a very different problem from a street in the wholesale district, where surface cars become a nuisance, sidewalks should be designed to facilitate the transfer of merchandise from the trucks to the warehouses, and provision should be made for parking the trucks at right angles to the buildings. The entire problem of street widths is most complicated, but it has been worked out with considerable accuracy by engineers.¹ If the street is unnecessarily wide for the purpose for which it is designed, the taxpayers are deprived of valuable property which might contribute large sums to the city treasury. If, on the other hand, the streets are too narrow traffic becomes congested, communication difficult, and the value of the adjacent property is thereby diminished.

In cities which have adopted a comprehensive zoning ordinance private property is subject to severe and minute restrictions. Even where such ordinances have not been adopted, a building line is frequently fixed beyond which the owner may not build. Experience has shown the necessity for some restrictions. If the property owners on narrow streets are allowed to utilize their property to the full extent for the erection of lofty buildings, both they and their neighbors are deprived of light, and the street becomes dark and congested with the multitude of people occupying the buildings.² To prevent this property owners are restricted in two ways: the height is fixed beyond which buildings may not be erected, or (a more modern way) the property holder is allowed to utilize the whole or certain portions of his property for buildings of a specified height, but above this fixed height the area of the building must diminish. This not only limits the population of the building but insures a more nearly adequate supply of light and air in the street.

(2) Restrictions on adjacent property

¹See W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 80-85, with references and footnotes showing the generally accepted widths.

²When it is remembered that some of the large office buildings in New York have a population of thousands (more than some small cities) who twice a day utilize the narrow street some idea of this congestion may be obtained.

After the land has been acquired for the street there are two methods in common use for the construction of the street or its pavement. The first may be called the direct method. By this the city department itself performs the work; that is, the engineering department prepares the plans and supervises, while the city laborers actually carry on the work. The other method is through contract, by which the engineering or the street department prepares a contract for the construction and pavement and contractors bid upon the work. Theoretically the contractor offering the lowest figures receives the contract. There are advantages and defects in both systems. The contract system is probably quicker and, if honestly administered, cheaper. Unfortunately it has been found that the contract system is often dishonestly managed. Even where this system is uprightly conducted, city officials are prone to safeguard their actions by making themselves the final judge of all controversies, and all contractors alike raise their bids proportionately in order to cover such contingencies. Street construction by the direct system is probably more expensive because the city as a rule pays its laborers higher wages than do private contractors. Moreover, the city usually pays a higher price for supplies and materials than do the contractors. There is less likelihood of poor work resulting from fraud under the direct system, although the municipal laborer is notoriously inefficient. From one point of view the direct system has decided advantages—it may furnish employment for numbers of unskilled laborers in the city, and in so doing it acts as a species of out-of-door poor relief. Experience has shown that whatever value this type of labor has from the sociological point of view, it cannot be defended from the economic standard. The question of the direct system as opposed to the contract applies not simply to the building of streets but to the construction and repair of all the public utilities discussed in this chapter. No definite answer can be given as to the relative merits of either system. Even the statistics are of doubtful value and the practice of different cities extremely varied.

The pavement of the street should be determined by the purpose for which the street is used. There is no best pavement

for all streets. Streets in the wholesale business district, which carry the burden of heavy trucks, should have a durable pavement in order to withstand the hard use to which it is subjected. For this purpose grouted granite blocks set in a cushion of sand laid on a concrete foundation is probably the best type. It is practically indestructible, is not slippery, and can be kept comparatively clean without undue expense. The great disadvantage is that it is noisy and, no matter how well the blocks are laid, slightly uneven. For the purpose of retail or residence streets granite blocks would be out of place on account of the noise and, particularly, because of the expense. For retail-business streets pavements of vitrified brick or chemically treated wood have been found extremely satisfactory. They rank next to granite blocks in durability and cleanliness and are safer than the sheet asphalt which is found in so many cities. Perhaps the most popular pavement for business streets is sheet asphalt laid upon a foundation of crushed stone. This is easily cleaned and cheap to lay, but it is not particularly durable, is the most slippery of all pavements, and is not easy to repair. It is, moreover, extremely noisy. A generation ago the most popular pavement for residence streets and for connecting highways was water-bound macadam. This consists of a series of layers of crushed rock carefully rolled together. The development of the motor car, with its pneumatic tires, has rendered this type of pavement unsatisfactory. A variant of this pavement, which is often used in resident districts and on connecting highways, consists of an ordinary macadam foundation on which is spread a comparatively thin layer of crushed stone treated with some asphalt composition. This makes a waterproof pavement, almost as noiseless as the old macadam and less liable to be cut to pieces by the pneumatic tires of motor vehicles. In some sections of the country the use of concrete for street pavement has been tried with considerable success. The expense of paving and keeping in repair the miles of city streets is enormous, and repairs on any type of pavement are both unsatisfactory and expensive. It frequently happens, therefore, that the cheapest pavement in the end is one of the most expensive pavements to lay; for example, water-bound

macadam is the cheapest to lay, but is the least durable of all pavements. As the result of experience cities are learning to spend more money upon the original cost of the pavements, hoping that the durability will compensate for this increased expense.¹

Cost of construction of pavements

In New England the greater part of the cost of the street paving is paid for by issuing bonds. Since pavements are considered as more or less permanent improvements, the cities are allowed to issue long-term bonds, and in many instances the pavements have been obliged to be renewed before the bonds have expired. The maximum term for pavement bonds required by Massachusetts law is ten years, but this is too long a term for bonds issued to pay the cost of macadam or asphalt paving and too short for granite or wooden paving.

Sidewalks

The construction of sidewalks is ordinarily assessed upon the abutter, although in some New England cities the expense is divided between the abutter and the city. Why there should be a distinction between the pavement of the highways and the construction of the sidewalks is hard to see, for although the community as a whole is apparently more benefited by the pavement of the highway, the abutter actually reaps almost as much advantage. The chief problem connected with sidewalks is their width. The character of the street should determine such a question. Streets in the wholesale district demand a maximum of road area and a minimum of sidewalk area. In the retail districts the sidewalks of necessity must be wide enough to carry the crowded traffic of shoppers. In residential districts the sidewalk itself may be narrowed and a strip devoted to grass, trees, or flowers. Between the sidewalk and the road is usually found a curbing. Originally this was granite, but with the use of granolithic and concrete it is frequently made of some artificial stone. The sidewalk itself may be constructed of anything from gravel to artificial stone. In northern

¹See W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 101-110, with references to authorities, and p. 103, where is presented a table in which pavements are arranged in their approximate order of desirability from the points of view of economy in construction, economy in repair, durability, cleanliness, noiselessness, and safety.

climates snow and frost make gravel walks unsatisfactory, while excessive rainfall in other regions renders them disagreeable. Formerly brick was both the cheapest and the most popular material for sidewalks, but this is rapidly losing its popularity because it is difficult to clean and in northern climates becomes extremely slippery in winter. The most popular sidewalk pavement today is that of some artificial stone in which cement is the chief factor.

3. *Water*

The water supply of a city is of vital importance. Not only is the city's health in a large degree dependent upon an abundant supply of pure water for drinking and cooking purposes, but the health and comfort of the citizens are largely affected by the abundance of the water supply for both municipal and personal cleanliness. A city possessing a supply of water which is sufficient to furnish even the poorest persons with an adequate quantity for household and personal cleanliness and, at the same time, to insure proper street-cleaning is in a far more healthy condition than one which is niggardly with its water. The fire department as well as the health department may make large demands upon the city's water supply. The water supply, moreover, must be both adequate and satisfactory to the industries of the city. Certain industries require far more water than others; certain other industries require that the water should be soft rather than hard. Thus the water supply of a city may not only determine the health but to a large degree the industrial development of the city.

Theoretically a city should possess a water supply which is sufficient in quantity, without color, taste, or odor, both chemically and bacteriologically pure, and of suitable texture.¹ The quantity of water necessary for a city depends upon many factors. In European cities the average per-capita amount supplied is about 40 gallons per day, but in the United States the

Importance
of the
water
supply

Requisites
of the water
supply :

(1) Quantity

¹See Allen Hazen, *Clean Water and How to Get It*; G. C. Whipple, *The Value of Pure Water*. W. B. Munro's "Principles and Methods of Municipal Administration," chap. iv, contains an excellent brief treatment of the problems connected with the water supply.

daily per-capita consumption of water varies from 100 to 200 gallons. The daily use of water for municipal purposes in most American cities is about 10 gallons per capita; for domestic purposes between 15 and 40 gallons per capita a day is generally allowed, although the average is quite generally below 40 gallons; industry and trade take from 20 to 40 gallons a day, dependent upon the character of the industry. With these maximum figures, there is left a daily wastage of about 10 gallons per capita. Part of this is lost through faulty joints in the water-mains, more through defective plumbing, but a still greater amount through sheer carelessness or intentional waste. At one time in Boston, when only about 60 per cent of the service was metered, the maximum consumption came during the night hours of the coldest period in the winter, thus showing that the householders had intentionally opened their faucets in order to avoid the danger of freezing their pipes. In Cleveland, on the contrary, where practically the whole service is metered, the greatest consumption comes during the day hours of the warm summer months.¹ When it is remembered that water is a commodity increasingly expensive to supply, the necessity for economy or at least for avoidance of waste is seen. Much may be done in this direction if a larger part of the service is metered, but water meters represent heavy first expense and are easily thrown out of order. What should be the proper quantity of water for any individual city cannot be definitely stated. In providing for the water supply of a city it is wise to take a figure of not less than 100 gallons per capita each day and to estimate for at least thirty years of normal growth. The reason for this will be more clear when water finance is explained.²

(2) Appearance

The consumers of water generally demand that water should be clear and without odor or taste. It is true that turbid water may be entirely healthful, and some supplies are not unhealthful which have both a slight odor and taste. These, however, are not satisfactory to ordinary consumers, who are

¹See W. B. Munro, *Principles and Methods of Municipal Administration*, p. 138.

²See page 510.

more particular along these lines than they are concerning the chemical and bacteriological purity of the water.

A proper water supply should be soft. Hard water not only (3) Texture deposits its salts in the various utensils but also requires the use of a greater amount of soap. For a single family this may seem to be but a small item, but when this additional cost continues for years and is multiplied by the constantly increasing population, it is evident that a city which supplies hard water is not fulfilling its proper function.¹ Among the cities which soften the water before delivering it to the consumer are Columbus, New Orleans, and St. Louis.

The city water should be pure and free from chemicals; (4) Purity still more important is its bacteriological purity. The city's water supply may become the greatest carrier of disease germs, and widespread epidemics have been traced to the infection of the water supply. The city is engaged in a constant struggle to obtain and to maintain the purity of its water.

The cities in the United States get their water supply from four types of sources.² A few middle-sized cities and many small cities derive their supply of water from ground waters; that is, by wells driven to the water-bearing strata.³ Such water may be reasonably pure but is apt to be too hard for domestic use. A greater number of middle-sized and larger cities, including New York and Boston, obtain their supply from impounded waters; that is, a river or a river system is diverted into a reservoir or artificial lake, which is partly filled by the rivers and partly by the natural drainage of the watershed. The purity of such a water supply depends almost entirely upon the vigilance with which the watershed and the supplying streams are inspected and protected from contamination.

¹See W. B. Munro, *Principles and Methods of Municipal Administration*, p. 140, quoting from G. C. Whipple, *The Value of Pure Water*, where it is figured that the soap wastage from hard water is between \$7 and \$8 per 1,000,000 gallons.

²See Department of Commerce, Bureau of the Census, *General Statistics of Cities (1915)*, pp. 41-47; also W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 131-132.

³Lowell, Massachusetts; Canton, Ohio; Memphis, Tennessee; and San Antonio, Texas.

Probably many more cities obtain their water from lakes—Chicago, Cleveland, Buffalo, and other cities upon the Great Lakes draw their supply from this source, through intakes set four or five miles from the shore. Although many of the same cities discharge their sewage into the lakes, the quantity of water is so great that there is sufficient dilution to prevent contamination. Some of the largest cities get their water supply from rivers. Among these may be mentioned Philadelphia, St. Louis, New Orleans, and Washington. From these large rivers the water supply is comparatively pure, but safety is assured by means of filtration. Often, however, supplies from rivers are turbid in color. Water taken from lakes, particularly if these are shallow or small, must be carefully inspected.

Water
purification

In many cities the water supply is examined and checked up at frequent intervals (sometimes daily) by the board of health in order that the purity of the supply may be maintained and that the bacteriological count may not reach dangerous proportions. Cities which derive their water from rivers or lakes are frequently compelled to install filtration or purification plants. Purification of water is accomplished in various ways; the most common methods are by chemicals and by filtration.¹ The chemical method consists in sterilizing the water by means of hypochlorides of lime or soda. This renders the water absolutely sterile of all objectionable bacteria. It is thus an excellent method in an emergency, and not a few cities depend upon it entirely. The other method most commonly used is through filtration, by which the water is allowed to penetrate through beds of coarse sand; the particles of sand become coated with a slimy deposit which purifies the water in its passage through the filter. This type of slow sand-filter can be operated after construction at a cost of about \$10 per 1,000,000 gallons, or 30 cents annually for each inhabitant.² This method is employed in Albany, Philadelphia, Pittsburgh, and Washington. The rapid sand-filter used in Cincinnati and Columbus is of a different type. Here the water is first allowed to stand in

¹ See Allen Hazen, *Clean Water and How to Get It*.

² See W. B. Munro, *Principles and Methods of Municipal Administration*, p. 147.

storage reservoirs for the sake of removing the sediment frequently found in river waters. The water is then pumped at a pressure through coarse sand-filters. This system is slightly more expensive to operate but cheaper to install, and there is very little difference in the per-capita cost to the inhabitants. When used in connection with the storage reservoirs, the rapid sand-filter has the advantage of removing the turbidity of the water, and it is more easily cleaned.

Although originally the franchise to supply water to many cities was granted to private companies, the whole modern tendency is toward both municipal ownership and operation of the city water supply. Indeed, this is as it should be, for the health and safety of the city are so dependent upon the quality and quantity of its water supply that no question of private profit should be allowed to enter into the problem. Moreover, an adequate supply of water for a growing city is an extremely expensive undertaking, and few private corporations would be willing to sink the amount of capital necessary to guarantee a sufficient supply for the increasing needs. Also, as will be seen in the discussion of water finance, the price charged for the water should not be so high as to limit its necessary and proper use.

In most American cities the water departments are under the control of a board, generally appointed by the mayor. But in the largest city—New York—a single commissioner presides over the departments of water, gas, and electricity, while in Boston the commissioner of public works takes charge of the streets, sewers, bridges, and water distribution. Much can be said in favor of the board organization, for the problems connected with the water supply are not only so technical as to necessitate the employment of an expert but also deal with questions of policy which popular opinion feels should be determined by a group rather than by a single individual. Whether the water department is separate or merged with other departments, it always forms a special bureau and employs or should employ a number of technical experts.

The functions of the water department are most varied. Primarily they are engineering problems dealing with the construction of the pumping stations or the erection of dams for

Public and private supplies of water

Water departments:
(1) Organization

(2) Functions

the reservoirs, the laying of the water-mains, and so forth. The purity of the water supply, however, requires expert bacteriologists or water engineers and not infrequently the assistance of the legal department to enforce the necessary regulations. When it is remembered that the water supply of most cities is a manufactured product in which several or many processes are involved, and which is sold in greater quantities than any other manufactured product, the business side of the water department becomes important. It is perhaps at this point that the board organization shows its greatest advantages. Questions of the extension of the water supply or water service, questions of water rates and regulations, meet with less criticism when determined by a board than by a single commissioner. Finally, the amount of capital sunk in municipal waterworks is enormous, and the financial administration of the invested capital, the fixed charges, and the collection of the rates is a department in itself. In small-sized cities many of these functions may be performed by other officials.

Water
finance

The total amount of money invested in the water supply systems in cities of over 30,000 population was placed in 1919 at \$1,257,831.733 for land, buildings, and equipment.¹ The same cities, moreover, had incurred a debt for the water supply systems amounting to nearly \$600,000,000.² These figures, large as they are, are increasing at the rate of about \$50,000,000 a year. In general cities have financed the water supply by means of long-term bonds. Little objection can be taken to this method, inasmuch as the water supply is considered the most constant source of income and the safest investment for municipalities to engage in. The former way was to provide a sinking fund for redeeming the bonds at maturity, but the more modern method is to issue serial bonds whose redemption should begin a few years after the system has been put into operation. Extensions and improvements to the system should be paid for either from the surplus of the sale of the water or by taxation, unless such extensions involve acquiring a supplementary water supply.

¹See Department of Commerce, Bureau of the Census, *Financial Statistics of Cities (1919)*, p. 291.

²*Ibid.* p. 303.

The question of the rate which should be charged the consumer is complicated. Various methods are in vogue which are so different that it is hard to find a basis of comparison. Much can be said in favor of the meter system, which automatically puts a check upon the waste of water and which, if an adequate minimum is allowed to the consumer at a fixed rate, will prevent improper economy. What the rate should be is partly a financial and partly a sociological question. From the financial point of view the rate should be high enough to yield a sufficient income to pay the annual interest and to redeem a certain portion of the bonds each year. In addition the system should be self-supporting; that is, it should yield a sufficient income to pay not only for its running expenses but for its upkeep. There seems no adequate reason why water should be freely given to the various departments of the city, such as the park and street-cleaning departments. Such demands make water finance difficult to calculate. Although it may be only a matter of bookkeeping, the water department should receive compensation at a fixed rate for all the water it supplies. On the other hand, the hygienic and social value of a copious supply of water is so great that the rates should not be raised to the extent of preventing such use. Water should be neither given away nor sold at a profit.

Water
rates

4. *Wastes*

Municipal sanitation depends not simply on the supply of pure water but on the disposal of the wastes of a city. This is peculiarly a municipal problem, for the massing together of large populations in a small area leads to the production of dangerous waste products which in a larger area would almost take care of themselves. The amount of the wastes of a city is prodigious. It has been estimated that in a large city this probably exceeds a ton per day for every head of the population.¹ Although much of this is in the form of sewage, yet a large part must be collected from various sources and disposed of in various ways.

Importance
of the prob-
lem of dis-
posal of
wastes

¹W. B. Munro, *Principles and Methods of Municipal Administration*, p. 168.

Classifica-
tion of
the city's
wastes:

(1) Ashes

The wastes of a city are generally classified under five main heads.¹ The least harmful waste is the ashes which are the product of commercial and household furnaces. These are practically free from all sources of contagion, but must not be allowed to accumulate. Next to the sewage they are, perhaps, the bulkiest of the wastes. In many cities their collection and disposal is left to private initiative, but in the larger cities this is done either by some city department—street-cleaning or board of health—or it is let out to some contractor. The use of ashes is limited chiefly to filling in and reclaiming unusable ground. Unless the municipality owns such land and may recoup itself by the sale of the reclaimed area, the collection and disposal of ashes constitutes a fixed charge, either upon the householder or upon the municipal treasury.

(2) Rubbish

Rubbish comprises the miscellaneous assortment of inorganic substances which accumulates in a great city—paper, boxes, rags, bottles, tin cans. It contains no decomposable matter, and for the most part can be easily consumed. Two methods have been devised for dealing with rubbish. By the incineration method the rubbish is burned under forced draft and is sometimes used to operate a municipal pumping or lighting station. Since, however, it takes from five to seven tons of rubbish to equal a single ton of coal, the daily supply of this waste must be large in order to operate a municipal plant economically. Another method involves a sorting process. Rubbish contains many articles of commercial value which may be picked out of the general mass and sold. The remainder must be disposed of by dumping on waste ground, by burning, or, in coast cities, by emptying into the sea.

(3) Refuse

Refuse consists in the main of sweepings from the streets and buildings. It contains both organic and inorganic matter and is subject to decomposition. The chief source of refuse is the street sweepings. In former days this had considerable theoretical value as a fertilizer, but the cost of collection and transportation far exceeded the possibility of obtaining any

¹ See W. F. Morse, *Collection and Disposal of Municipal Waste*, p. 13; also W. B. Munro, *Principles and Methods of Municipal Administration*, p. 168.

net revenue. With the introduction and spread of the motor car and the decline of the use of horses in the city, street sweepings have still less value and, in general, are treated like ashes.

Garbage is composed of the wastes from houses and hotels; (4) Garbage it is chiefly organic matter and is easily and quickly liable to putrefaction. Different cities have attempted various methods of disposing of it. In rural communities and in some cities of over 100,000 population¹ the city maintains a herd of hogs to which this garbage is fed. Such a herd, however, may be malodorous and, as experience has shown, is liable to infection. Some cities bury the garbage, thus using it to fill in low land; other cities² dump it into rivers or into the sea. If carried a sufficient distance from the coast the latter is a satisfactory solution of the problem, but not infrequently the wind and tide wash portions back and the beaches and shellfish beds are polluted. Another method of disposal is incineration. This is conducted on a large scale in Atlanta, Memphis, Milwaukee, and other cities. Attempts have been made to utilize the heat so generated for steam power, but since the garbage contains a high percentage of water the experiments have been unsuccessful. A final method of garbage disposal is by reduction, which involves subjecting it to heat and pressure, thereby extracting the oil and grease, which have some commercial value, while the residue has some value as fertilizer. The great difficulty with the reduction plant is that in spite of all attempts to improve it a malodorous process is connected with it. If located near a city, it is bound to arouse objection; if at a distance, the expense of the transportation of the garbage diminishes the profits.

5. Sewage

The most voluminous and most dangerous of all the city's wastes is sewage. This is largely liquid and amounts to about one hundred gallons per capita daily. It is composed of the wastes from the sinks, washing and toilet appliances of the houses and hotels, and the wastes from factories, which not only are of similar character to the household sewage but also

Character
and amount
of sewage

¹Cambridge, Denver, Providence, and Worcester. ²New Orleans.

may contain a large proportion of commercial waste, particularly from dyeing plants. A third kind of sewage is the waste water from the roofs and streets of the city, known as surface sewage. Surface sewage in itself is not dangerous and can with impunity be turned into any watercourse. The harmless character of this kind of sewage has led cities, which are obliged to purify the other kinds of sewage before discharging it into watercourses, to construct separate systems in order to take care of surface water. Household and factory sewage is extremely dangerous to health, both from the large amount of putrefying matter it contains and the possibility of carrying disease germs.

Problem
of sewage
disposal

The problem of sewage disposal is distinctly characteristic of cities. In sparsely settled rural communities the amount of sewage is comparatively so small that it can with safety be absorbed into the ground, although great danger may come from the possibility of polluting the water supply drawn from the wells. When, however, a large population is concentrated on a small area the disposal of the sewage becomes an important question. The construction of public sewers did not begin in the United States until the nineteenth century, and even these were primitive, being generally constructed of wood. With the rapid increase of city population in the nineteenth century and a better realization of the danger involved in sewage, more and more cities undertook to construct sewerage systems. The simplest and easiest method of disposing of the sewage is to empty it into some watercourse. Cities situated upon lakes, rivers, or on the seacoast have, at first thought, a comparatively simple task, since all that seems necessary is to construct a drain to the nearest large body of water. But the problem is not so simple. Sewage discharged directly into the sea may be thrown back on the city by the action of wind and tides, and large municipalities are obliged to carry their discharge pipes well out to sea. Even then the risk is great. Cities along rivers and lakes not only run the risk of polluting their immediate neighborhood but of spreading this pollution to other communities. Theoretically the amounts of water in great lakes or rapidly flowing rivers so dilute the sewage that

there is little danger ; but Chicago found it advisable to cut a great drainage canal and reverse the course of the Chicago River, causing it to drain from Lake Michigan and carry the sewage across the state of Illinois, emptying it into the Mississippi. The large amount of water and the length of the canal probably render even its vast amount of sewage innocuous. Many cities, however, are obliged to treat their sewage in some way before discharging it into watercourses.

The object of sewage purification is not to render the sewage absolutely pure but to render it comparatively inoffensive, so that it will be innocuous to the water supply.¹ Five or six methods of treatment have been devised. The simplest is by screening, which merely serves to remove the heavier solids and to enable the city to dilute the remaining amount. This does not pretend to be a complete method of sewage treatment. A more common way is by sedimentation. This consists in running the sewage into settling tanks, where it is allowed to stand for a certain number of hours and the solid matter is precipitated. This precipitation is often hastened by the addition of lime or other chemicals. The liquid which is drawn off in the sedimentation tanks is comparatively inoffensive, but the disposition of the solid "sludge" presents another problem. In London this is carried out to sea and dumped overboard ; in Worcester, Massachusetts, it is used for filling in low land. Another method of sewage disposal which reduces the amount of "sludge" is the septic-tank process. In this the sewage is allowed to stand in tanks and the quantity of sludge diminished by decomposition. What remains, however, must be removed from time to time. There are three methods of filtration of sewage which have been tried in various places. Perhaps the commonest type is that of the intermittent filter. Large beds of sand are prepared over which the sewage is allowed to flow ; after it has filtered through the sand the beds must be allowed to dry. A second method of filtration is by contact beds, which

Sewage
purification:

(1) Screen-
ing

(2) Sedi-
mentation

(3) Septic-
tank process

(4) Filtra-
tion

(a) By the
intermit-
tent filter

(b) By con-
tact beds

¹A comprehensive treatment of this subject is by Leonard Metcalf and H. P. Eddy, *American Sewerage Practice* (3 vols.), Vol. III. For a brief treatment see W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 197-206.

consist of water-tight tanks filled with coke, slag, or some other coarse material, in which the sewage is allowed to stand for several hours. This process renders the sewage nonputrescible and odorless and removes about 80 per cent of the bacteria. The third filtration method is the sprinkler system, by which

(c) By
sprinklers

An entirely different method of sewage disposal is found in the sewage farms. It has been long known that sewage has a high fertilizing value, and various suggestions have been made, looking toward its utilization. The method has been worked out with considerable success in both Paris and Berlin. In the latter city the sewer farms are about forty-five square miles in extent. The sewage reaches the farms through ordinary pipes and then is pumped into a standpipe and is distributed through irrigation ditches. During the spring and summer the system works very well, but in the winter the sewage must be stored in reservoirs. Sewage farms have been attempted in the West, notably at Los Angeles, Pasadena, Salt Lake City, and Colorado Springs, but in no case have they been remarkably successful.

Sewage
farms

In many cities the administration of the sewers is placed under a special board. The same arguments concerning the necessity of planning and of long-time finance apply to the sewerage system as have been discussed in connection with the water department. The work of both these departments lends itself to the board type of administration. Whether managed by a board or a commissioner, experts of various sorts must be engaged. The construction of sewers involves far-sighted plans and often presents many difficult engineering problems. The main lines of the sewer must be large enough to care for the ever-increasing amount of sewage from a growing population and also must be sufficiently large to take care of any sudden emergency, such as a cloudburst or heavy rain-storm. The whole question of treatment is an extremely technical one, which neither a commissioner nor a board could be supposed to handle alone. Experts must necessarily be

Organiza-
tion and
functions
of the sewer
department

consulted as to the method of treatment adopted, and after this has been adopted a sewerage engineer must be engaged to supervise its successful operation.

Sewers are in the nature of permanent public improvements. The expense is so large that their construction cannot be paid for by current taxation. Therefore they are usually financed by means of bonds running thirty, forty, and even fifty years. Modern financial custom advocates the use of serial bonds as opposed to the sinking-fund system. The disposition of the sewage is so vital to the health of the city that no attempt is made to operate the system for profit. In most cities, however, a portion of the cost of construction is assessed against the property owner, and the owners of new buildings not infrequently have to pay a sewerage entrance fee. From the very character of the sewerage system it is one which lends itself predominantly to public control. In 1919 the cities having a population of more than 30,000 actually expended \$9,035,454 for sewers and sewage disposal. At the same time the combined debt incurred by these cities for this purpose was \$245,777,204. Baltimore and Boston led the list with debts of \$25,000,000 and \$20,000,000 respectively. Chicago had a debt of \$15,000,000 and Philadelphia of \$14,000,000. No other city of this class had had a debt of \$10,000,000.¹

Sewerage
finance

6. *Public Utilities*

The term "public utilities" is sometimes used to describe the public services which are performed for the inhabitants of the city either by the city government itself or by private companies. Strictly speaking, all the services which have been discussed in this chapter may be classified as public utilities; but since the maintenance of streets, the water supply, and the disposal of the city's waste are so fundamental, they may be considered as the normal and legitimate duties of any city government. There is less unanimity of opinion concerning the supply of gas, electricity, heat, docks, terminal facilities, market

Definition

¹Department of Commerce, Bureau of the Census, Financial Statistics of Cities (1919), pp. 184, 302.

places, and other means of communication or trade. These services are all so vital to the welfare and convenience of the community that they are impressed with a public character and from the very earliest times have been partially dependent upon government regulation. Most of these services have a common characteristic. They require the use of the streets or highways or some public property. The right to use this public property is generally expressed in a charter or franchise. Thus the so-called utility companies depend for their very existence upon a franchise granted by the city or state legislature.

Important
elements in
a franchise:

(1) Au-
thorities
granting

One of the most important elements of a franchise concerns the power which grants it.¹ If a franchise giving a private company the use of the streets of a city may be granted by the state authorities, the principle of municipal home rule is seriously violated and a most valuable resource of the city may be given up without the consent of the citizens. On the other hand, if the city governments are given freedom in granting franchises, it has frequently been the case that unscrupulous promoters have been able by corrupt means to obtain grants for which they gave no adequate compensation and which were then beyond the power of the city to control. Too often a city government has sold its birthright for a mess of pottage. The most modern method of granting a franchise is to vest the authority in the power of some commission, dependent upon approval either by the city government or by a popular referendum.

(2) Duration

A vital element in the franchise is its duration. Early franchises were frequently granted without limited time and thus in many communities were perpetuated. The modern tendency is to limit the duration of the franchise. In many instances this limitation is made too short. A private company will not engage in erecting a plant to supply a public utility unless it is assured of a certain profit. The first years of operation are frequently at a loss; consequently a sufficiently long time should be provided for by the franchise so that the promoters may obtain a fair profit upon their investment. This period varies with the nature of the utility and the character of the

¹See Goodnow and Bates, *Municipal Government*, pp. 382-392.

city. In general no franchise is acceptable which runs for less than twenty-five years, and few franchises should be granted for a period of more than fifty years.

The courts have held that any business affected with a public interest is subject to public regulation; that the legislature in the exercise of its police power may fix the rates charged for the performance of such a service. These rates, however, must not be so low that the owner obtains no profit, in which case the courts have declared that he is deprived of his property without due process of law. If, however, a franchise has been granted in which the company is allowed to charge a maximum rate, this is held to be in the nature of a contract which may not be violated by the company. The modern way of fixing rates is by means of a commission, acting under the general legislative power to fix reasonable rates. There are two types of commissions: those appointed by the state authorities to fix rates for purely municipal utilities, as in New York City; and general state commissions, which supervise the action of the rate-determining authorities in cities. The question of what the rate should be is one in which the public is vitally interested. Abnormally high rates make too great a charge upon the public and deprive many persons of the legitimate benefit of a public utility. Too low rates may compel the company to curtail its service and prevent it from paying interest on its obligations and dividends upon its stock. A successful method has been worked out in Boston in dealing with the gas company. This is known as the sliding scale.¹ The price of gas is fixed at 90 cents per 1000, and a standard dividend of 7 per cent is allowed on the company's stock. As the company decreases the price of gas it may increase its dividend 1 per cent for every reduction of 5 cents. This scheme was copied from the gas franchises in London, and similar schemes have been adopted for the trolley fares in Cleveland. Closely connected with rates is the question of the quality of the service. In the case of gas the quality is subject to frequent inspection. In connection with street-car service, commissions

(3) Regulation of rates

(4) Quality of service

¹See W. B. Munro, *Principles and Methods of Municipal Administration*, p. 250, with references.

may order cars to be run at certain times and in other ways regulate their service. It is of vital importance that there be some authority to regulate the private operation of public utilities.

(5) Reversion of plant

A properly drawn franchise should provide that at the expiration of the period the plant should revert to the municipality. In most modern franchises the company is required to set aside each year a portion of its income to amortize the outstanding securities. Thus, according to the terms of a modern franchise, the city will receive at the end of the period, if all goes well, a running plant in good order, fully paid for, while the promoters will have received a minimum dividend and, if successful, larger profits upon their invested capital.

Types of public utilities

In most American cities the supply of gas and electricity is in the hands of a private company. Franchises are granted for the use of the public streets, and the modern tendency is to subject such companies to strict control along the lines just described. Some cities, however, have engaged in municipal ownership and operation of these utilities with varying success. Transmission of messages by means of the telephone and telegraph is also a service which is everywhere given to private companies, with somewhat less supervision. Transportation of passengers on the surface and elevated cars and in subways is one of the most important of all the services in a large city which are still in the hands of private companies. Originally the franchises were granted without time limit and were in a very small degree subject to public regulation. The modern tendency all along the line is toward stricter public supervision. In only a few cities does the city government actually operate portions of the transportation system, but in many of the larger cities the credit of the city has been granted to private companies for constructing necessary public works. Thus the subways in Boston and in New York were built with public funds and leased to the operating company on such terms that at the end of the lease the subways themselves would have been paid for.

The evidence is conflicting upon the relative merits of public or private operation of public utilities.¹ Each utility must be

¹ See Goodnow and Bates, *Municipal Government*, pp. 389-396.

judged by itself, and in many instances the character of the city and the efficiency of its government must be taken into consideration. There is little doubt in the minds of most investigators that the health and welfare of the city demand both public ownership and operation of the street, water-supply, and sewerage systems. Beyond this there is no agreement. The English boroughs have been quite successful in the operation of municipal gas plants. The same success has not attended similar experiments in the United States. Neither the English nor the American municipally operated electric-light companies have been remarkably successful. In other fields of municipal operation the evidence is so slight that no conclusions can be drawn. It is probable, however, that a private public-utility company can, if properly supervised, furnish its service at a lower rate and is more economically run than a municipal company. Evidence is overwhelming that an unsupervised public-utility company can make large profits and furnish cheap service, but this service may or may not be satisfactory and adequate. There are, however, other elements than mere economy to be considered. Public utilities are conducted for the benefit of the public, and private gain should be incidental to the service rendered. Social considerations may require that a public service be rendered at a loss, as in the disposal of sewage; or may demand that the service be rendered with little or no profit, as in furnishing water. A suitable and cheap system of transportation may make it possible to distribute the inhabitants of a congested area of the city. The relative merits of profit and of social advantage must be weighed in determining the propriety of either method of service. On the whole, the English boroughs, with their form of government and with the caliber of men who are willing to engage in municipal service, have been more successful in operating public utilities than have the American cities. Whatever theoretical advantages or disadvantages may be adduced for one method or another, the general tendency is strongly in favor of municipal ownership if not operation.

Relative
merits of
municipal
and private
operation
of public
utilities

CHAPTER XXIX

MUNICIPAL ADMINISTRATION. EDUCATION, CHARITIES, AND CORRECTIONS

I. EDUCATION¹

Develop-
ment of
education in
the United
States

Local education in the United States had its origin in the act of the Great and General Court of Massachusetts of 1647. By this every township with fifty householders must establish an elementary school supported by taxation and every town of a hundred families must set up a grammar school. The idea of free education did not, however, spread rapidly or throughout the entire country. Fees were frequently charged, and in many communities there was no public provision for education. But after the Civil War universal elementary education became the rule. At present all the children below a certain age are required to attend schools a portion of each year. Although this is required by state law, the burden of maintaining these schools and a large part of their administration is placed in the hands of the local authorities. In New England localism is carried to the extreme, and the schools of the cities are practically independent of county or state authorities. It is true that they must conform to certain laws and maintain certain standards, but these standards are ordinarily established with the rural districts in mind. Outside of New England county or state authorities have much wider powers, but throughout the country the schools of a larger city are under the administration of municipal authorities.

There is almost complete unanimity in the practice of American cities regarding the organization of the school department.

¹S. T. Dutton and David Snedden's "The Administration of Public Education in the United States" is the standard authority. For brief treatments of the subject as connected with municipal government, see W. B. Munro, *Principles and Methods of Municipal Administration*, chap. ix, and Goodnow and Bates, *Municipal Government*, chap. xiii.

Practically everywhere this department is independent of the other organs of the city government and is commonly chosen by popular election. In almost every city, moreover, it is similarly organized and consists of a board of laymen composed, in many instances, of men and women and an expert agent known as the superintendent.

Organiza-
tion of the
school
department:

School boards are usually chosen as the result of popular election, quite frequently according to the nonpartisan method; that is, they are nominated by a petition and elected on a ticket without party designation. The question which is most discussed in the election of the school board is whether it should be chosen from wards and districts or at large. Many investigators advocate election at large for the reason that little districts produce little men, and the school committeeman from a ward would be under the control of the ward politicians. Election at large commonly avoids these dangers, but brings with it the possibility of certain other dangers which should be considered. Such election may result in the choice of all the members of the school committee from one party, one section of the city, one race, or one religious denomination, which in turn may give to the entire school system of the city these religious, racial, or local characteristics. This is to be deprecated. Under the party system (and possibly under the system of election by wards) it is usually avoided, and different races and sections of the city receive some representation. Recently the system of cumulative voting or proportional representation has been applied in some cities to break the force of election at large. In some cities—and these among the largest¹—the members of the school board are appointed by the mayor. Little can be said in favor of this mode of selection, for it mostly results either in a partisan board or in the appointment by the mayor of a board of quasi-experts. Experts have no place upon the school board. In some cities—Philadelphia, for example—the board of education is appointed by the courts, and in some of the Southern cities it is elected by the city government. The most popular method of choice, however, and the one which on the whole gives the greatest satisfaction, is popular election.

(1) The
school board

¹Chicago, New York, and San Francisco.

Functions of
the school
board

Three main functions are as a rule allotted to the school board. The first function in many cities is given to some committee of the city government rather than to the school board, and deals with the acquisition of land and the erection of buildings. These questions can well be decided in many instances by the city government, and since the city council is called upon to appropriate the money for the land and buildings, it may perhaps be well placed in their hands. It happens frequently that a committee of the city council is governed more by political than by educational considerations. Land may be acquired and the type of building erected which will satisfy the political necessities rather than the educational needs of the city. As a part of this function the school boards are generally given the care and upkeep of the plants. A second function of the school board is also largely an administrative or business function. This deals with the contracting for supplies, which, in those states where free textbooks are furnished, may involve considerable amounts of money. Under this function might also be placed the granting of permits for the use of the school buildings after hours. The most important function of the school committee, however, is the appointing of the superintendent and his assistants, the engaging of teachers, the final determination of the curriculum, and the questions of discipline. These four groups of activities require diverse capabilities, and school boards ordinarily act through such committees, on which are placed the members who show some fitness for the particular type of work the committee is supposed to perform.

(2) The
school
superin-
tendent

The executive agent of the committee is the school superintendent. He is usually elected by the committee for a definite term of years. This term should be sufficiently long in order to allow him to acquire a knowledge of the school system and to supervise for a considerable length of time the policy which he is authorized to put into effect. The relation of the committee to the superintendent varies in different states and cities and in the same city with different administrations. Although technically the superintendent is the executive agent of the school board, he is often the controlling factor in its deliberations.

He is the expert and gives his full time to the interests of the schools. The school board is composed of laymen who at most give only a small proportion of their time. By judicious recommendation, therefore, a skillful superintendent very frequently can get the school board to undertake a course of action which he suggests. In carrying out the policies adopted in ordinary times the superintendent receives the support of the board, and his judgment and evidence are for the most part accepted against that of any other person. These are the relations which exist when the superintendent is the unanimous choice of the whole board. As the superintendent's term of service continues, however, and the composition of the school board changes, it usually happens that new members become critical of some of his actions and older members may become disaffected. Thus the success of the system depends to a large degree upon the ability of the superintendent to win and maintain the confidence of his board.

The superintendent has three main duties to perform. In the first instance he selects the teachers. It is entirely true that in most cities the school board appoints the teachers, but this appointment is often little more than ratification of a previous selection on the part of the superintendent. Even where the system of competitive examinations is used for appointing the teachers, the superintendent is often called upon to exercise considerable skill in the choice of the particular candidate from the group certified. His ability to pick good teachers in a very large degree determines the success of the whole administration. A second function deals with the course of study. In many instances state legislation determines certain features of the curriculum, but there is always a rather wide field of choice left for the school board to make. Few school boards contain members sufficiently expert to deal with these questions. This is primarily the work of an expert. The superintendent thus frames the course of study, which is submitted to the school board for criticism and approval. A third function of this official is concerned with the discipline and the promotion of the teachers. Experience here has shown that it is a wise course to leave in the hands of the board the formal action in suspending

Duties of
the super-
intendent:

(a) Selec-
tion of
teachers

(b) Deter-
mination of
the course
of study

(c) Disci-
pline and
promotion
of teachers

or discharging teachers, but never to act except upon the advice of the superintendent. Both the teacher and the general public feel that the action of a board is less arbitrary than that of a single individual, and the action of the board, although taken at the advice of the superintendent, relieves the latter of certain disagreeable responsibilities. In like manner, promotions are commonly passed upon by the board, though the advice of the superintendent is often conclusive. Purely automatic promotions, depending upon the length of service of a teacher, are never satisfactory, and in every system the superintendent is asked for official or unofficial recommendations. Finally, the superintendent has certain duties inherent in his position, yet unconnected with the school system. He may make himself a powerful influence in the community not simply in educational affairs but in other civic movements. There is great danger, however, that such influence and action may be misunderstood, and great care is necessary that he attempt no political or partisan action.

(d) Relation
to the
community

The
teachers:

(1) Appoint-
ment

(2) Ex-
amination

(3) Promo-
tions

(4) Term

(5) Salary

The backbone of the school system is the body of teachers. The teachers in the public schools are in many instances the most permanent of the city employees and certainly possess the greatest opportunity for influence. The original method of choice of teachers in practically every city was by vote of the board upon the recommendation of the superintendent. By this means the greatest emphasis was laid upon the personality of the teacher and no formal test was made of capacity and knowledge. In an increasing number of states an examination is now required. Teachers who pass the examinations receive certificates, but possession of a certificate by no means guarantees an appointment. Moreover, by passing advance examinations, teachers become eligible for higher positions, although appointment does not necessarily follow. This system of general examination has an excellent effect without compelling the superintendent to select any particular candidates. In some cities, however, the competitive system has been introduced; even then not the highest one but a group of candidates are certified. The tenure of the teacher is practically during good behavior, and dismissals are extremely rare. The salaries of

school-teachers are small, not only absolutely, but relatively to other municipal employees who perform less exacting duties. Some states have adopted a system of pensions which grant a retiring allowance outright. In other states the contributory-pension system has been adopted.

The school plant comprises more than the mere school building. In rural and semirural cities it may include the adjoining playgrounds, and in the largest cities the building should contain adequate provision for recreation. The plant also contains the equipment in the shape of desks, blackboards, laboratories, and other necessary instruments of instruction. Such a school plant is an expensive investment. Often cities are tempted to build extravagant buildings. When it is remembered that school buildings should be near the centers of the school population, which may shift in a few decades, the futility of attempting to erect monumental or extravagant buildings is clearly seen. Moreover, the requisites of education are constantly changing; new demands may be made upon the schools which old buildings cannot satisfy. It would seem far better economy, therefore, to construct simple, well-built, fireproof buildings which might serve the needs of a single generation and which, if then found unsatisfactory, could be torn down and replaced by a new building either in the same or another locality.

The function of the school system is primarily to furnish elementary, grammar, and high-school education, but this is by no means the end of its entire activity. In large cities, particularly, new duties and functions are being constantly given to the schools that greatly increase their usefulness. Thus in many cities evening classes are conducted for persons above the normal school-age who are employed during the day-school hours. Adult foreigners and immigrants frequently take advantage of these classes, and the usefulness of the school system is thereby greatly extended. In some states education is not confined to the old accepted cultural definition; it includes education along special lines—for years there have been courses in manual training for the boys and in cooking for the girls. But special vocational schools have more recently been introduced, where the children are taught particular trades or

The school
plant

Functions of
the school
system

occupations. As a result of the study of the mental condition of the school children, it has been found wise to establish in some communities special schools for defectives and for children who are below normal intelligence. Other schools have been established for children suffering from some physical disability, and the open-air schools have proved of great value. The schools, moreover, furnish a convenient vehicle for giving definite instruction along certain lines which the state or city wishes emphasized; thus the public health is greatly aided by the instruction given to the school children as to the effect of over-indulgence in alcohol and narcotics, while the frequent inspection of the school children by the school physician and nurse enables the authorities to detect incipient disease and to recommend treatment or isolation, thus preventing epidemics. In some cases special clinics, like the dental clinics, are established in connection with the schools, where children may be treated without expense or at a nominal charge. The schools, moreover, serve as excellent agents for good citizenship and seek not only to teach a knowledge of the operations of municipal and state government but to inculcate a proper moral standard in dealing with these problems. Finally, the school building may be made a social center at which various local organizations may meet for the purpose of education or recreation.

School
finance

The school systems are almost entirely supported by taxation. It is true that some income is derived from fees charged to nonresidents and that some slight revenue comes from gifts, but this amount is almost negligible. Education is expensive. The total amount spent by the cities having a population of over 30,000 in 1919 was more than \$200,000,000, or a per-capita expense of \$6.89. As might be expected, New York City expended the greatest amount (\$44,975,896), but Los Angeles had the greatest per-capita expense (\$10.88). Out of the two hundred and twenty-seven cities of the United States having a population of more than 30,000, only six cities¹ (and

¹ Charleston, South Carolina; Mobile, Alabama; Shreveport, Louisiana; Winston-Salem, North Carolina; Portsmouth, Virginia; Columbia, South Carolina. See Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), pp. 204-209.

these all in the South) spent in 1917 less than \$3 per capita for their public schools. Shreveport, Louisiana, has the distinction of having the smallest per-capita expense (\$2.55). Not only is a large amount spent for schools, but their costs is the greatest single item in the city's budget. In all the cities having a population of more than 30,000 in 1919 the schools took more than 31 per cent of the cost of the city government, or three times as much as any other single department.¹ In no city did the cost of the schools consume less than a fifth of the entire revenue of the city—generally between 25 and 35 per cent, and in Norristown, Pennsylvania, nearly 60 per cent. Not only are the schools absorbing a large proportion of the cities' revenue but they are demanding a constantly increasing proportion. This rapidly growing demand comes in a large measure from the newer uses to which the educational plant is put. Admitting that most of the recent tendencies in education are for the best interests of the people, the question may properly be asked whether the cities can afford to furnish all these types of education without charge. As will be seen, the debts of the cities are increasing faster than either their population or their taxable wealth, and a limit must be placed on some of the expenses.

2. CHARITIES AND CORRECTIONS

The earliest form of municipal charity was poor relief. In Poor relief: England relief of the poor has been a duty of the towns since Queen Elizabeth's time, and in New England this system has been followed. Outside of New England poor relief is administered almost entirely by the county in the South and is shared by town and county in other portions of the country. Still there are important exceptions to this statement. For example, in New Orleans, Richmond, and Charleston poor relief is provided under the municipal government, while Buffalo, Rochester, and Jersey City, in the North Atlantic States, have no municipal poor relief, but leave the matter to the county authorities.

¹The highway and the police departments each expended a little over 10 per cent of the city's revenue. See Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), pp. 210-212.

**(1) Organ-
ization**

Where the relief of the poor is one of the municipal functions, there is a body or committee called overseers or guardians of the poor. This committee is either elected directly by the people or appointed by the mayor—more cities adopting this latter plan. It may be a rather large, unpaid board or a comparatively small board whose members receive some salary. Whether it is large or small, paid or unpaid, there is usually an executive officer known as the agent or commissioner who is charged with the actual administration.

**(2) Method
of granting**

Poor relief is afforded ordinarily through an almshouse, to which indigents may be sent. This almshouse is under the control of a keeper, who acts under the direction of the board or commissioner. Originally there was little attempt made to classify the inmates of almshouses, and indigents, insane, and feeble-minded were herded together. With the advance of science this has been changed, and the sick and defective are sent to other institutions.

**Out-of-door
poor relief**

Out-of-door poor relief is not granted to any great extent in American cities. Where it is granted, it commonly takes the form of free medical attendance or a contribution of coal or, in rare cases, a small grant of money. Relief which is given to others than inmates of the almshouses, as a rule comes through the churches or some outside charitable agencies.

Hospitals

In practically every American city there is at least one hospital. These hospitals are maintained in some cities entirely by the municipal authorities under either a specially appointed board of trustees or a division or department of the board of health. In other cities hospitals are managed by trustees or private corporations and often receive a contribution from the city. Where no definite contribution is given by the city government the expenses of indigent persons are paid by the city on the certification of the overseers or the commissioner of poor relief. As has been pointed out, some states require municipalities to maintain an isolation hospital, and the laws of other states compel the city or county to support a tuberculosis nurse, while not a few of these cities and counties have established special sanatoriums for the treatment of that disease. The modern tendency is for the city to treat its sick in appropriately

different ways and either to establish or to contribute to the specialized hospitals which modern medicine now requires.

Many cities are undertaking specialized care of dependent or defective children. The simplest form is a day nursery, which releases the mother from the care of her child while she is at work. Children's homes or placing-out agencies are found in not a few cities, while more contribute to the support of private institutions for the benefit and protection of needy citizens. Closely analogous to these children's hospitals and homes are the special schools which some cities maintain for defectives, and sometimes certain classes of defectives are treated in private institutions at the expense of the city or state, even though they are not in the city, but in some other community.

Care of
children

It would be impossible to enumerate all the varieties of charity which are found in our great cities. Some of these could hardly be classified as charities any more than the schools should be regarded as charitable institutions, for they perform a municipal service. In this category might be found the municipal playground, the swimming pools, the recreation fields, and so forth. Other charities are designed to deal especially with dependent classes, particularly with deserted wives or dependent children. It is difficult to draw the line between those municipal activities which are designed for the help and improvement of citizens of all classes and affect the poor and well-to-do alike and those which deal primarily with the indigent.

Other
charities

In the larger cities of the United States there generally is a department of charities. This department may include the administration of poor relief which has already been described, but it ordinarily includes far more. The modern tendency is to organize this department under a single commissioner with deputies subordinate to him, but in many cities the board type of organization is followed. The single commissioner probably has the advantage in dispatch and efficiency, but from the very nature of charitable relief a board representing various grades of opinions probably gives better satisfaction.

Department
of charities

In the United States the municipal courts are usually state courts administering state law within the municipality. The legislatures of the states have from time to time established

Corrections

special courts for municipalities in order to facilitate the administration of justice and to meet their special problems. Thus, in the largest cities we find juvenile courts, courts of domestic relations, small-claims courts, courts of conciliation, night courts, day courts, and so forth. It should be repeated, however, that these courts administer state law as well as the ordinances which the state has allowed the city to make. The judges of these courts are chosen according to state law: in Massachusetts they are appointed, as are all the judges; in other states they are ordinarily elected (sometimes unfortunately) according to districts or wards of the city. These so-called municipal courts, particularly those dealing with juvenile cases and domestic relations, are as a rule provided with probation officers and sometimes with medical and social workers. Especially in connection with children reformation rather than punishment is sought. The correctional institutions are primarily those established by state law and include not simply jails, houses of detention, and reformatories but reform schools and institutions for education and improvement. Only in the largest cities are these supported and controlled by the government of the city. As a rule they are managed by commissioners or boards of trustees appointed by state authorities (or, in some rare instances, by the city authorities) or chosen by popular election. It is extremely difficult to classify these as municipal, state, or private institutions.

CHAPTER XXX

MUNICIPAL ADMINISTRATION. MUNICIPAL FINANCE

The problem of financing American cities is most important and serious.¹ The previous chapters have given some idea of a few of the many functions which American cities are now undertaking. None of these services can be performed without money. The problem of municipal finance involves primarily an attempt to procure the money necessary to pay the expenses of the government and administration. The amount needed is startling. Thus in 1919 the two hundred and twenty-seven cities in the United States having a population of more than 30,000 raised \$1,224,112,714 and spent \$1,233,111,835.² These figures are larger than those of the peace budgets of many European states. But large as the figures are in aggregate, their significance is more clearly seen when reduced to per-capita figures. These same American cities raised \$35.32 per capita and expended \$35.58 per capita.³ Assuming the average size of a family as five, this means that the average weekly expenditure in cities having a population of more than 30,000 was \$3.40 a week per family. Municipal finance may be best studied under four heads: revenue, expenditure, accounting, and debts.

Importance
of municipal
finance

¹ C. F. Bastable, *Public Finance*, presents a comprehensive treatment of the whole subject. An excellent account of municipal finance is found in W. B. Munro's "Principles and Methods of Municipal Administration," chap. x. See also Goodnow and Bates, *Municipal Administration*; chaps. xiii, xiv, xv, and xvi are extremely valuable as giving a comparative study of American and European municipal finance, but the figures quoted are now out of date.

² Department of Commerce, Bureau of the Census, *Financial Statistics of Cities (1919)*, pp. 118-119.

³ *Ibid.* pp. 140-141.

I. REVENUE

Sources of
municipal
revenue:

Municipal revenue is derived from several sources. The most important of these is taxation, and the most important kind of taxation is the general-property tax, which contributes about 65.5 per cent of the total revenue. Some cities attempt to collect a poll tax, but this rarely contributes a large percentage of the total revenue.¹ All cities require business and license taxes, which contribute about 5 per cent of the revenue for all the cities having a population of over 30,000. In the South these taxes are widespread and bring in considerable revenue. Another source of revenue is derived from special assessments and charges for outlays. These bring in about 5.6 per cent for all the cities, but in one² the amount received reaches 31 per cent of the total revenue. A source of revenue which was at first greatly neglected but which now is increasing in importance is found in the earnings of public-service enterprises. For all the cities over 30,000 this source contributed 10.5 per cent of the revenue, but in Kansas City, Kansas, 44.7 per cent was derived from this source.³ The remainder of the city's revenue is derived from fines, earnings of general departments, highway privileges, rents and interest, subventions, grants, gifts, and donations. This last source of revenue amounts to 4.2 per cent for all the cities, but rises to 41.9 per cent in Washington, D.C.⁴

¹Norristown, Pennsylvania, derives 4.7 per cent of its revenue from this source. Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), pp. 143-145.

²Stockton, California, East Chicago, Illinois, and Bellington, Washington, obtain 27.8 and 27.4 per cent respectively from this source. Wichita, Kansas, and South Bend, Indiana, obtain 24 and 25.9 per cent respectively. In no other city does it equal 25 per cent. Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), pp. 143-145.

³Jacksonville, Florida, obtained 42 per cent from this source; Austin, Texas, 38.3 per cent; Tacoma, Washington, and Holyoke, Massachusetts, 37.4 and 37.7 per cent respectively; Hamilton, Ohio, New Orleans, Louisiana, and Pasadena, California, 30 per cent or more. Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), pp. 143-145.

⁴Dayton, Ohio, receives 25.2 per cent from this source; Mobile, Alabama, 24.1 per cent; Berkeley, California, 21.4 per cent; Tampa, Florida,

As has been said, the bulk of the city's revenue is derived from the general-property tax. This is a direct tax laid upon all kinds of property, real and personal, tangible and intangible, within the jurisdiction of the city. In administering this tax certain important problems must be studied—the kind of property to be taxed, the valuation of this property, the rate at which it should be taxed, and the collection of the tax.

The kind of property which the city is allowed to tax is determined by the state. There is good reason for this, because, should municipalities be allowed to exempt certain classes of property or to tax other classes, the taxing power might be used to drive away or to attract certain kinds of business. The power to tax—involving as it does the power to destroy—is too great a weapon to be given into the hands of the various cities to use as they think wise without any uniform supervision. Originally the states for the most part allowed the cities to tax all kinds of property within their jurisdiction, although until comparatively recently cities were not permitted to tax the franchises of corporations. In many states the tendency now is to tax the franchise of corporations and remit to the cities concerned their proper share. In most states the great bulk of the general-property tax is derived from two classes of property—real estate and personal property in the form of securities. Some states, however, as will be seen, are exempting intangible property from municipal taxation and collecting by state authorities a corporation, a security, or an income tax, of which a proper share is remitted to the different cities.¹

The assessment of personal property in most cities is made by a board of assessors who attempt to set a value upon the property existing within the jurisdiction of the city. Originally assessors were almost everywhere chosen by popular election, often in wards. The result was that they were subject to political influence and personal appeal from their constituents. They

1. The
general-
property tax

(1) Kinds of
property to
be taxed

(2) Assess-
ment

[Assessors]

25.3; West Hoboken, New Jersey, 20.5 per cent; San Jose, California, 26.7 per cent; Wilmington, North Carolina, 22.9 per cent. No other cities derive as much as 20 per cent from this source. Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), pp. 143-145.

¹See pages 227-228.

frequently attempted to favor the inhabitants of their own ward at the expense of the rest of the city. The more modern practice is appointment by the mayor either with or without confirmation of the city council, although in many cities they are still elected by the city council. In the large cities the assessors may have some special training and qualifications for their duties, but ordinarily they are untrained men.

(3) Valuation of real estate

As a rule the valuation of real estate is made most unscientifically. Hardly ever is the assessment based upon the actual value of the property; the assessors attempt to discover either what the property would bring at a forced sale or what it is assumed to be worth. In both cases this is sheer guesswork, and quite often this guesswork is complicated by the assessor's desire to treat his friends with leniency. Many cities assess both land and buildings at one valuation; in others a more scientific attempt is followed in order to determine separately the value of the land and of the buildings. In the valuation of buildings there are many complications—the nature and structure of the building, the amount which would be allowed for depreciation, and so forth must all be considered. In the largest cities real estate is scientifically assessed by dividing the city into several sections and determining the valuation of property according to the character of the section.¹ Thus, residence property is appraised as residence property, not as property in the wholesale district; agricultural land, if any exists (as it frequently may in rural cities), is appraised according to the purpose for which it is used, not as the land in the wholesale district. In addition maps are prepared to show the size of each lot, and special rules for valuation are made to determine the relative value of lots on the same streets. If this work has been carefully and scientifically done by an impartial board, there is more likelihood of getting a true valuation free from personal political influence. In the same way the large cities frame rules for the valuation of buildings, classifying them according to the type of construction and applying a fixed system of depreciation within the different classes.

¹See W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 416-420, with references.

The assessment of personal property is attended with great difficulties. Tangible property may perhaps be discovered and assessed, although the disclosure of this kind of property is often attended with considerable inquisition. In some states the assessors visit and make personal inspection of the premises of the citizens; in others the citizens are required to make a sworn return of all their personal property with its value, on the basis of which the assessor levies the tax. The true valuation of tangible personal property is even more difficult to obtain than that of real estate, and at best only an approximation can be hoped for.

(4) Valuation of tangible personal property

Intangible personal property, such as stocks, bonds, mortgages, bank deposits, and so forth, is extremely difficult to discover or to tax accurately. Formerly most cities relied upon the sworn statement of the owners as to the amount and value of property in this class. If, however, securities which had a fixed par value were to be taxed at the same rate per \$1000 as real estate, a large portion of a person's income would be taken in taxation. Thus a thousand-dollar 4 per cent bond would yield \$40, and in a city where the tax rate was \$20 a thousand the owner would be deprived of half of this income. This fact led to the general concealment of intangible personal property. The state law might require the citizen to make a sworn declaration of all the property he possessed of this sort, but citizens would perjure themselves in making their declaration or (more commonly) refuse to make such a declaration. In case of such refusal the assessor would set the tax at what he thought the citizen would stand. Here came in political influence, party influence, and personal friendship. So it happened that a vast amount of intangible personal property altogether escaped taxation. The result was that the personal property which was taxed and all real estate had to pay a much higher rate than would have been necessary had all intangible personal property been taxed. The result was that the general-property tax both was unjust and failed to produce at a reasonable rate an adequate revenue.

(5) Valuation of intangible personal property

The general-property tax had failed because of the common requirement that all property within the city must be taxed

2. New
forms of
taxation

at the same rate. This, as has been shown, forced intangible property into hiding. The problem was to secure such a rate as would prevent the concealment of intangible property and yet produce an adequate revenue. This could only be accomplished by a classification of property, and in order to do this it was frequently necessary to amend the state constitutions, which required that all laws should be equal and uniform. Many states have now done this and have allowed the legislature to classify the property within the state. This has already disclosed many advantages in the way of bringing intangible property out of hiding. This system is capable of further development, and a method of classification of property and taxation for police purposes may be developed. Thus, unimproved real estate, if taxed at a higher value than improved real estate, will tend to prevent the holding of real estate for an appreciation of value and may force the erection of much-needed houses. So, also, tenements of a dangerous type might be taxed at a higher rate than more modern tenements, thus forcing the owner to make the necessary improvements. Such use of the power of taxation for police purposes could safely be intrusted only to the state legislature and should not be vested in the hands of the city council. The most common use of the classification that has been made is the distinction between real estate and intangible property. Thus, some states¹ have reduced the taxation on intangible properties to a very low figure, with the result that the amount of declared intangible property has greatly increased and the sums derived from this low, fixed tax have been greater than what the authorities attempted to collect under the old system.

(1) The
state
income tax

The most up-to-date method of raising revenue is by levying a tax upon the personal incomes of the citizens. If this were assessed as the old general-property tax is there would be little improvement, for the income tax would be evaded as easily as the tax on intangible property. The more modern method—which was first adopted in Wisconsin and now has been taken over by many states—is for a state board of assessors to require all the inhabitants of the state to make sworn, detailed returns

¹ For example, Iowa, Maryland, Minnesota, and Pennsylvania.

of the source and amount of their income. These returns are then examined and followed up, and the tax is collected by the state authorities, who remit to the cities the proportion due them.¹

A fruitful source of revenue lies in the numerous public-service enterprises which are found in every city. Trolley-car companies, telephone and telegraph companies, electric-light companies, all possess both personal and real property, tangible and intangible, which should contribute to the revenue of the city in which these corporations operate. The taxation of public-service companies, however, is not a simple problem. Various methods of taxation have been attempted. The most obvious course is to tax the real estate of the company lying within the jurisdiction of the city—the land and buildings, the tracks, the poles, and the wires. This is comparatively easy to discover and to fix a valuation upon. The greatest value, however, of a public-service corporation lies not in its tangible property but in its intangible property; that is, in the franchise which gives it the right to use the streets of the city for its wires, conduits, or tracks. How shall the valuation of this franchise be determined? A simple method is to tax the franchise on the basis of the number of miles of tracks or wires or of poles, which the company possesses within the city, but this is open to serious objections. Such taxation may prevent the company from extending its service to less profitable fields. A second method is to tax the franchise on the basis of its net earnings, but these are difficult to fix, and their determination may open the door to fraud and corruption. The method which is generally accepted as the best is to tax the gross earnings of the company. These are easily discovered. A danger, however, is always present in taxing such gross earnings. To the city government they seem large, and the politician frequently forgets that a large part of these earnings must be devoted to the payment of fixed charges, such as interest on the bonds, the upkeep of the property, and an adequate dividend on the capital invested in the company. The temptation is always to levy too high a rate and thus cripple the company, for it should be remembered that a public-service corporation is a business

3. Taxation
on public-
service
enterprises

¹ See page 227.

concern and cannot serve the public as it should unless it receives an adequate return. Therefore, unless the city refrains from excessive taxation of the gross earnings, the company cannot extend or improve its service to meet the needs of a growing community. Finally, it should be remembered that the users of the utility are the ones who ultimately pay the taxes either in increased rates or in decreased service.¹

4. Business taxes

Most cities levy licenses and taxes upon special kinds of business. In the Southern cities there are many taxes of this sort and the amount received is quite large, although it forms only a small percentage of the entire revenue. The extension of such a system is attended with danger. Certain types of business are easy to classify and to subject to a proper tax, but within these broad types there are many varieties and grades which will necessitate special rates. The classification of businesses by the city government opens the doors to favoritism and persecution. Moreover, a license tax, classified and rated, ultimately becomes little more than a property or income tax.

5. Special assessments

Many cities obtain large amounts as the result of special assessments. As has been seen, it is a common custom to levy upon the adjacent property the entire cost of any improvement which has been made, or a large proportion of it. Thus, street-paving, the highways, and, in some instances, the extension of water and sewer service are charged upon the abutters. This custom, as well as the success of the collection, varies in different portions of the country. In some states the greater part of the cost of the improvement is recovered by taxation, but in others they are not so successful. Thus, among the largest cities Chicago obtains 12 per cent of its revenue from this source, while Philadelphia and Boston secure less than 1 per cent.² If the assessment for improvements is not made until the entire improvement has been completed, there is less likelihood of its collection than when the abutter is taxed each year for a proportionate part of the whole.

¹As in the question of the regulation of rates, sociological rather than financial considerations are often influential. See page 519.

²Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), p. 143.

It has been noted, the large cities in the United States obtain about 10 per cent of their revenue from the earnings of public-service enterprises. In the former German Empire approximately 25 per cent was so obtained, and in the English cities about the same amount. As has been seen, both the English and German cities have gone much further in the development of municipal trading than have the municipalities of the United States. The enterprises have been so managed abroad that they were profitable. In the United States not only have these undertakings been quite usually left to private companies, but where taken over by the cities, even when well managed, they have been conducted so as to reduce the cost of the service rather than to yield a revenue. The sociological instead of the financial aspect has been uppermost in the minds of the American cities.

6. Earnings
from public-
service
enterprises

The rate of taxation is first of all fixed by the city government and is determined by the amount of money which the city has appropriated for its expenses. Two dangers have been discovered in leaving to the municipalities entire freedom in fixing such a rate. In some instances the rate was placed so high that certain kinds of property were unjustly treated; thus, many states have limited the rate at which a city may tax the property within its jurisdiction at so many dollars per thousand or mills per dollar. A second difficulty arose from the fact that the property within a city was frequently undervalued by the local assessors. This was sometimes done to avoid the payment of heavy county and state taxes, as these taxes were not infrequently based upon the valuations of the local assessors. To prevent this many states provide boards of equalization¹ which review the work of the local assessors and attempt to prevent them from undervaluing the property within their jurisdiction. Where, however, the cities are prohibited from taxing property above a certain rate, it is frequently necessary to increase the valuation in order to obtain the required amount of revenue.

Rate of
taxation

After the assessors have finished their work and the city council has determined the rate of taxation by dividing the assessed valuation by the amount to be raised, this is mathematically

Collection
of the tax

¹See page 226.

applied to the property of each and every citizen; the tax bills are sent out either from the city treasurer's office or from some special official known as the collector of taxes. Theoretically the citizen should at once pay these taxes, special assessments, and license fees within the time specified, but actually this seldom takes place; it is notorious that only a small percentage of a city population pays the poll taxes and that a somewhat smaller percentage succeeds in evading the payment of special assessments. The collector of taxes may ultimately force payment by a distress warrant and selling the property of the delinquent taxpayer at auction in order to meet the assessed taxes. Such action, however, leads to unpopularity and is resorted to only in desperate cases; but it thus may happen that many cities end the year with a large amount of uncollected taxes. Income and corporation taxes and taxes upon public-service franchises which are gathered by state authorities are apt to be more promptly collected and remitted to the city authorities.

2. EXPENDITURE

Municipal
expendi-
tures
increasing

During the last half of the nineteenth century municipal expenditures increased with startling rapidity, and during the two decades of the twentieth century not only the aggregate grew large but the rate of increase was higher. Thus, from 1860 to 1890 the population doubled and the estimated value of property increased fourfold, but the total state and local taxation was five times greater.¹ Since 1900 the city expenditures have been growing nearly three times as fast as the urban population and faster even than the increased valuation of the municipal property, rapid and great as this has been. Between 1903 and 1919 the general departmental expenses of cities having a population of 30,000 more than doubled.² The reasons for this are not hard to see: obviously there was a general increase in wages and salaries; in the second place, the cities were continuing to grow in size at a phenomenally rapid rate.

¹ J. A. Fairlie, *Municipal Administration*, p. 321.

² Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), p. 78.

As has been shown, it becomes always more expensive to protect and serve the inhabitants of a city when the population increases beyond a certain size; finally, what was probably the most important and controlling factor in this rapidly growing rate of expenditure was the added demands for public service and improvements which were made upon the city. Better pavements and better lighting, purer water, more efficient schools, were all demanded and must all be paid for. Not only were these improvements in kind demanded but, as has been seen, the cities were expected to enter new fields of municipal service. The result was startling. The cost of general government more than doubled between 1903 and 1919.¹ The expenses of the fire department are almost twice as much. The cost of health conservation and the police department has increased more than threefold. The outlay for sanitation has more than doubled, as has the amount appropriated for charities, hospitals, and corrections. The cost of the city schools has increased from \$80,000,000 to more than \$216,000,000; the amount spent on recreation from \$7,000,000 to more than \$24,000,000; the amount on pensions and gratuities from \$3,000,000 to \$18,000,000, or more than four times as much as in 1903.² In 1919 the cost per capita for the cities having a population of more than 30,000 was \$21.75. The principal governmental costs are shown in the table below.

	TOTAL	PER CAPITA
General government	\$76,977,390	\$2.22
Police department	80,017,027	2.33
Fire department	64,540,941	1.86
Other expenses for protection of persons and property	12,503,134	0.36
Conservation of health	20,208,615	0.58
Sanitation	61,290,630	1.77
General expenses of highways	69,097,634	1.99
Repair and construction for compensation of highways	3,388,145	0.10
Charities, hospitals, and corrections	55,086,145	1.59
Schools	238,006,835	6.80
Libraries	9,842,384	0.28
Recreation	25,971,607	0.75
Miscellaneous	11,804,982	0.34
General	23,253,337	0.67

¹In 1903, \$30,000,000; in 1919, \$72,000,000.

²Department of Commerce, Bureau of the Census, Financial Statistics of Cities (1919), p. 78.

The figures are the average for all cities having more than 30,000 inhabitants. Individual cities may show a different distribution, but in general this represents roughly the way in which the average city spends its revenue.¹

**Municipal
appropriations**

In all types of city government the power to appropriate the revenue of the city lies in the city council, whether this be a large bicameral or a single-chamber council or a commission. The representatives of the people jealously keep in their own hands the right to determine the amount of money they spend and thereby control taxation. The actual spending of the money, however, is not vested in the city council, except under the commission type of government. Following the federal analogy, the power to make appropriations was vested in one set of men and the power to apply these appropriations in another. Thus the city council merely turns over to a more or less independent group of officials the expending of the money the council has appropriated. In former times the appropriating power was carelessly and extravagantly used; different committees, often having no relations with each other, recommended the appropriation of various amounts for all sorts of purposes, and no general check was kept either upon the appropriations or upon the way in which they were dispersed. In more recent times limitations have been placed upon the appropriating power of the city government, and an effort has been made to correlate these appropriations and expenditures and in some way to control the disbursements.

**Methods of
controlling
appropriations
and
disbursements:**

(1. New
York City

(2. General
law for
Massachusetts

Four different methods have been tried. The first may be exemplified in the case of New York City, where a special budget-making authority was created, known as the board of estimate and apportionment. This body prepares the appropriations, which are ultimately submitted to the board of aldermen, who are allowed to make reductions only, and even these are subject to the veto of the mayor. The Massachusetts plan places the making of the appropriations in the hands of the mayor, who submits them to the city council, but that body may not increase, although it may decrease, any appropriation.

¹Department of Commerce, Bureau of the Census, Financial Statistics (1919), pp. 204-205.

The third method is adopted in commission-governed cities and fuses the appropriating and disbursing authorities; the council or commission (consisting of the heads of the various departments) appropriates the money, which they in turn, as department heads, spend. In the city-manager plan the budget is first made by the city manager, but the approval of the council must be secured before the heads of the departments may disburse the money, nominally, if not actually, under the direction of the city manager. The city-manager method of making appropriations more nearly resembles the Massachusetts plan, where the responsibility is given to the mayor. In the city-manager cities, however, the council may increase the appropriations.

(3) Commission-governed cities

(4) City-manager cities

A municipal budget is a method of financing the needs of a city according to some definite plan. It includes both the expenditures and the revenues. It should be prepared from data gathered from the experiences of more than one year. It should show not only the total amount that each department has spent, or proposes to spend, but how this amount is to be distributed among the various activities of each department. The budget is thus "an instrument and a process of government. As an instrument, it is a means of getting before the representative body, which has the power to control the purse, a well-considered plan, with all the information needed to determine whether the plan should be approved before funds are made available for its execution. As a process of government, it is a procedure for insuring complete accountability for past grants, and for requiring those whose future acts are to be controlled to assume full responsibility for preparing, explaining and defending their plans and proposals for future grants, such plans for the future to include: (1) an expenditure program based on estimated service needs, and (2) a revenue program indicating what grants of authority are desired to enable them to raise the money to make purchases as well as to meet outstanding obligations."¹ To fulfill this purpose a budget should present the following essentials:

Municipal budget

1. A *work program* showing *what work has been done* by the government with costs classified by functions or services rendered and

¹ *Municipal Research*, No. 80 (December, 1916), p. 3.

presenting a plan for the future with the estimated costs of the several functions or services.

2. An *analysis of cost* of things used or to be used in doing work, or rendering service, such as personal service, supplies, materials, etc.

3. An *estimate of appropriations* to be developed into an act of appropriation—a statement of the amount of appropriation or drawing accounts to be placed at the disposal of the spending officers to cover the cost of the work to be done.

4. An *estimate of revenues and borrowing*—a statement of the ways and means of raising the funds to pay for the work authorized.¹

How the
budget
is made

The most scientific way in which a budget can be made is well exemplified by the practice in New York City.² According to this the board of estimate and apportionment, or in other cities the mayor, receives from each department the estimates of their expenditures for the coming year. With these estimates should be submitted the expenditures of the previous year or possibly the preceding years. The mayor alone is supposed, in many cities, to deal with these estimates, but in New York a special commission investigates the demands of the various departments and reports their findings to the board of estimate and apportionment, which has the final decision in case of a difference of opinion. The New York plan differs from the Boston plan and that followed in many cities in demanding what is known as a segregated budget. This means that each department shall itemize and state the purposes for which each amount is desired. There is great advantage in this system. By the other method—known as the lump-sum budget—the departments were not infrequently led into extravagant courses and often spent on one project the greater part of the appropriation for the entire department. The segregated budget, however, has the disadvantage of paralyzing administrative initiative in the executive department; it also is expensive in that it requires a considerable clerical force to prepare it and increases the difficulties of auditing. The best practice would seem to be to require enough segregation to show the actual cost of running the different bureaus in a department and to

¹ *Municipal Research*, No. 80 (December, 1916), p. 19.

² See the Charter of the City of New York, Sects. 226-247.

prevent the money appropriated for one purpose from being used for others. After the New York commission has reported, a tentative budget is prepared and printed, on which public hearings are held. This is an extremely important feature of budget-making, but it is too little taken advantage of by the public in most cities. After the public hearings the board of estimate and apportionment adopts the budget, with such changes as seem fit, and submits it to the board of aldermen. As has been said, the aldermen may not increase any item which the board has inserted, but they may decrease any item subject to the veto of the mayor. This veto can be overridden only by a three-fourths vote of the board, and, if not sustained, it restores the amount originally asked by the board of estimate and apportionment. The budget system is well adapted for the large undertakings, vast expenditures, and complicated departments necessary for so large a city. Smaller cities should preserve the four great essentials; namely, minute classification in estimates, examination by some person or body familiar with the needs and workings of each department, public hearings, and segregated appropriations.

3. ACCOUNTING

Municipal accounting is the attempt to arrange the accounts of the city so that they may be easily understood and intelligently used.¹ It is not sufficient for the purpose of good administration merely to account for the expenditure of every penny, although this must always be done. In addition the accounts must be in such a form that data contained in them will be available for comparison with previous years and the data of one city with that of another. The accounts must do more than merely balance the receipts and expenditures. They must group or segregate both expenditures and receipts, so that it may be possible to determine intelligently and accurately the cost of any particular service at any particular time. In the last twenty years much has been done to establish a proper system. This has been attempted, first, by legislative process,

Definition

¹See Goodnow and Bates, *Municipal Government*, pp. 422-426, with references; also W. B. Munro, *Principles and Methods of Municipal Administration*, pp. 460-464.

whereby the states have passed laws directing the cities to keep their accounts according to certain plans. It has been accomplished more successfully, however, by administrative means; not a few states have provided for the periodic audit of municipal accounts by state officials and have required the cities to make certain returns according to definite forms, particularly when they seek to borrow money beyond the debt limit.

4. DEBTS

Definitions As has been shown, the expenditures of a city exceed the revenue. All the cities, therefore, have debts, but these debts are of various sorts and are differently treated. The funded debt of a city is that part represented by bonds which have a number of years to run and which are to be redeemed either serially or by a sinking fund. The floating debt of a city is that for which no long-term securities have been issued and no funds provided for its redemption. These are usually evidenced by short-term notes, which may include loans in anticipation of the collection of taxes. The current debt of a city is the debt for which payment is already provided by cash on hand or taxes levied but not collected. The gross debt of a city is the total amount of all debts outstanding, while the net debt is the gross debt less all assets, including possibly the amount in the sinking fund.¹

Amount of municipal debts The debts of cities having a population of more than 30,000 in 1919 were \$3,702,272,563.² Large as these figures are, what is more startling is to note that this municipal debt shows an increase of more than 40 per cent between 1909 and 1919. Not quite so amazing is the per-capita debt, which, in 1919, was \$118.28 as against a per-capita debt in 1909 of \$88.20, showing an increase of only about 35 per cent. Rapidly as the gross debt of the cities has grown, the increase in population

¹ Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1910), pp. 42-43; W. B. Munro, *Principles and Methods of Municipal Administration*, p. 465; Goodnow and Bates, *Municipal Government*, pp. 416-417.

² Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), p. 94.

has prevented a similar extension in the per-capita debt. The largest cities have the largest debts; thus, those cities having a population of more than 500,000 have a per-capita debt of \$160.41, while cities with a population between 30,000 and 50,000 have a per-capita debt of only \$60.09.¹ This is but another evidence of the fact that the expenses of government grow more than proportionally with the increase of population.

The increase of municipal indebtedness has led the states to limit the amount of indebtedness which any city may incur. It is managed in various ways, but usually by fixing a percentage of the total assessed valuation and forbidding any city to incur a debt beyond such a percentage. Indiana fixes 2 per cent; New York, on the other hand, limits its cities to 10 per cent of the real-estate assessment. California limits the indebtedness not by percentages of assessment but by the annual income, and prohibits any city from incurring a debt beyond an entire year's revenue. In addition to these constitutional limitations, some states limit the city's debts by statutes—sometimes a limit based upon a percentage of the value of the property, sometimes on the nature of the loan. Thus Pennsylvania prohibits cities from issuing bonds for a period longer than thirty years, and Massachusetts has classified the purposes for which bonds may be issued and has fixed a term of years for each purpose. Some cities are required to submit the question of municipal loans to a popular referendum, and in some instances a majority of two thirds of the voters is required for adoption.

The American practice of attempting to limit municipal debts by law has proved a failure. Cities have been able to appeal to the legislature and obtain permission to borrow money in excess of the limits fixed by law. A sudden disaster, a much-needed improvement, an attempt to engage in some municipal undertaking which will produce a revenue, are reasons which will frequently lead a legislature to except a city from the legal requirements of the debt limit. In England the control of municipal indebtedness is largely an administrative affair, and if a city can convince the local-government board of

Debt
limits

Futility of
legislative
restrictions

¹ Department of Commerce, Bureau of the Census, *Financial Statistics of Cities* (1919), pp. 296-297.

the necessity for a loan, such permission is granted, but the purpose of the loan, the use of the money obtained, and the provision for its extinguishment are carefully supervised. Administrative rather than legislative control is probably a better method of controlling the debts of the municipality.

Payment of
municipal
debts

Two methods are adopted by cities for extinguishing their indebtedness. One is the sinking-fund plan; the other, the serial-bond plan. According to the first the city council is supposed to appropriate each year an amount of money which, if put at compound interest, would extinguish the bonds upon their maturity. Theoretically this has much in its favor and perhaps is somewhat more economical; practically, however, there are grave disadvantages. The city council cannot be compelled to make the annual appropriations for the sinking fund. Some unforeseen expense may lead to postponing such appropriations. The sinking funds may be carelessly or foolishly invested, sometimes in the future securities of the city itself. Finally, there is the danger of actual dishonesty and corruption on the part of the sinking-fund commissioners. The serial-bond plan provides that a certain number of the bonds shall be redeemed each year. In this way the city is compelled to appropriate a sum each year in order to protect its credit, and in return is required to pay each year a decreasing interest charge. Modern opinion is overwhelmingly in favor of the serial-bond plan.

Municipal government is largely municipal housekeeping. The state legislature and the state laws pretty conclusively determine the liberty and the activities of the citizens. The citizens are governed by the state, but are supplied with the necessities and conveniences of modern life largely by the municipalities in which they live. State government is primarily interested in problems of policy. In recent years it is increasingly interesting itself in problems of administration and service. Still, the city is primarily the administrative organization. As such its frame of government should be adapted to business and administrative conditions, and, in particular, its financial administration should be conducted according to business principles along efficient lines.

INDEX

- Absent voting, 99-100
- Accounting, municipal, 547-548
- Address, legislative, removal of judges by, 282
- Administration, in colonial boroughs, 362
- Administration, county, 323-325; of justice, 325-329
- Administration, municipal, city council's powers diminished by creating special departments and legislative commissions, 367-368; means of state control over cities, 391-392; powers of city council, 418; under commission government, 435-436, 438, 441; under city-manager plan, 449-450, 452; city departments, 454-463; board or commissioner, 462; subordinate officials and employees, 463-469; police, 470-479; fire, 479-485; health, 485-490; building, 490; city planning, 491-496; streets, 496-505; water, 505-511; waste disposal, 511-513; sewage, 513-517; public utilities, 517-521; education, 522-529; charities and corrections, 529-532; finance, 533-550
- Administration, state, 149-167; characteristics, 149; officers, 150-153; boards and commissions, 154-157; internal organization of boards and departments, 157-161; relative merits of board or commissioner, 160-161; relation to legislature, 161-162; relation to governor, 162; relation to courts, 162-163; reorganization, 163-167; functions, 168-193; enforcement of state law, 168-172; education, 172-176; charities and corrections, 176-180; correctional institutions, 180-182; public health, 182-185; labor-law administration, 185-189; agriculture, 189-190; regulation of corporations, 190-193; public works, 193; judicial control of, 302-304; ministerial and discretionary acts, 303-304; by sheriff, 328
- Administration, town, 335
- Agamenticus, Maine, chartered as colonial borough, 359
- Age, as qualification for voting, 40, 395; statistics as to, in cities, 352; for office of mayor, 422
- Agriculture, state administration of, 189-190
- Alabama, vote required for amending constitution, 32; suffrage conditioned on residence, 41, 395; suffrage conditioned on literacy, 42, 44; direct primaries, 68 n.; four-year term of legislature, 203; organization of counties, 322; election districts, 340; suffrage conditioned on payment of taxes, 397; commission government for cities, 432-434
- Albany, chartered as borough, 313 n.; colonial sheriff in, 361; freemen in, 361; water purification, 508
- Aldermen, in colonial period, 360; at present, 411; confirmation of mayor's appointments by, 427-429
- Alien population, in states, 4-5; in cities, 349-351; the foreign-born, 349, 370; reasons for presence in cities, 349-350; effect in cities, 350-351; the negroes, 349; cause of increased difficulties in police administration, 473-474
- Amendments, to Federal Constitution, first ten, 14-15, 17; Eleventh, 15; Fourteenth, 9, 11-13, 15, 23, 196, 238-239, 276-277; Fifteenth, 43; Eighteenth, 323, 324; Nineteenth, 40-41, 395-396
- Amendments, to state constitutions, early, 20; in general, 30-36; proposed by initiative, 194 n.; framing of, by legislatures, 222-223
- Amendments, to city charters under home rule, 385-386

- American City*, 445 n., 452 n.
American Political Science Review, 75 n., 112 n., 134 n., 143 n., 150 n., 166 n., 167 n., 217 n., 227 n.
 American Proportional Representation League, publications, 102 n.
American Year Book, 18 n., 68 n., 126 n., 165 n., 166 n., 204 n., 272 n., 395 n., 432 n.
Annals of the American Academy of Political and Social Science, 200 n., 317 n.
 Annapolis, Maryland, chartered as borough, 313 n.; a close corporation, 360
 Appeal, courts for, 271-272, 298; right of, 298; grounds, 298-299; effects, 299-300; reforms, 301
 Appointment, power of, by governor, 139-144; limitations on, 140-142; through the civil service, 141-142; political consequences of, 143-144; in cities, 366; by mayor, 370, 427-429, 458, 523; by city manager, 449
 Area, variations in, of states, 4; of counties, 318, 346-347
 Arizona, density of population, 4; constitution amended by referendum, 35; suffrage qualification, 42; emergency legislation, 118; no veto or amendment of direct legislation, 122; recall, 126-127; term of legislature, 203; size of senate, 203; recall of judges, 282; municipal home rule, 384-385, 447
 Arkansas, vote required for amendment of constitution, 32; constitutional convention provided for, 32; amendment by referendum, 35; direct primaries, 68 n.; vote on referendum in 1916, 121; governor's power of removal, 143; legislative budget, 233; jurisdiction of county courts, 271, 326; organization of county boards, 322; townships, 340; special legislation for cities forbidden, 367; extension of suffrage to non-citizens, 394; payment of poll tax required for voting, 397; election of department heads under commission government, 435
 Arrest, 291
 Ashes, disposal of, 512
 Ashley, R. L., "Preferential Voting," 101 n.
 Ashtabula, Ohio, adoption of proportional representation, 102; effect of proportional representation, 103, 403; city-manager plan, 451
 Assessment, of property for municipal taxation, 535-540; of real estate, 536; of tangible personal property, 537; of intangible property, 537. *See also* Special assessments
 Assessors, county, 330; town, 336; in Southern county districts, 340; in cities, 535-537
 Atlanta, Georgia, business taxes, 229; garbage incineration, 513
 Attainder, bill of, 11
 Attorney, district, 152; prosecuting, 286, 289-290, 326-327
 Attorney-general, in states, 151-152; assistant, 152
 Auditor, state, 153; county, 331
 Austin, Texas, revenue from public-service enterprises, 534 n.
 Australian ballot as adopted in the states, 92-93
 Bail, 291-292
 Baldwin, Simeon E., *The American Judiciary*, 269 n., 278 n., 300 n.
 Ballot, the, 91-99; importance, 91-92; early regulations, 92; reform of, 92-99; Massachusetts type, 92-96; party-column type, 93-95; variations, 93-94; short ballot, 95-96; short versus long, 96-99; preferential, 101-102; proportional representation, 102-104; initiative and referendum measures on, 120-121, 125; municipal, 398-403
 Baltimore, state-appointed police commissioners, 169, 420, 458 n., 475; early board of health, 182; coincides with county, 318 n.; early election of aldermen and mayor by electoral college, 363, 419 n.; first waterworks, 367; special legislation, 379; retains bicameral council, 411; term of mayor, 421; residence requirement of mayor, 422; organization of police force, 474; fire board, 482; cost of public-health work, 490

- Banking, regulation of, by state, 101
- Barnes v. District of Columbia*, 384
- Barnett, J. D., The Operation of Initiative, Referendum, and Recall in Oregon, 105 n.
- Bastable, C. F., Public Finance, 533 n.
- Bates, F. G. *See* Goodnow, F. J.
- Beard, C. A., American Government and Politics, 12 n., 66 n., 83 n., 86 n., 89 n., 96 n., 202 n.; Readings, 13 n., 58 n., 146 n.; "Ballot's Burden," 57 n., 96 n.; "Commissions in American Government," 154 n.
- Beard, C. A., and Shultz, B. E., Documents of the Initiative, Referendum and Recall, 115 n.
- Bellington, Washington, revenue from special assessments, 534
- Berkeley, California, revenue from miscellaneous sources, 534 n.
- Bicameral legislature, in states, 21, 198-200; in cities, 363-364, 365, 411
- Bill of rights, in Federal Constitution, 14-15, 17, 22; in state constitutions, 22-23, 28-29; as limitation on legislature, 196
- Birmingham, Alabama, salary of commissioners, 434-435
- Birth rate in cities, 353
- Blackstone, Commentaries, 239 n., 251
- Bloomfield v. Charter Oak Bank*, 333
- Blue, L. A., "Recent Tendencies in State Administration," 158 n., 159 n.
- Boards and commissions, state. *See* Administration, state
- Boise, Idaho, salary of commissioners, 435
- Boroughs, colonial, 313, 359-362; at present, 341-342
- Boss, the, in political parties, 57
- Boston, state appointment of police commissioner, 169, 458 n., 475; early board of health, 182, 485; first city charter, 313 n.; coincides with county, 318 n.; popular election of mayor provided in 1822, 364; first waterworks, 367; special legislation for, 379; nomination by petition, 400; size of city council, 411; caliber of council members, 412; how council members are chosen, 412; term and reëligibility of mayor, 421; salary of mayor, 423 n.; cost of mayor's election, 423; mayor's veto, 425; executive budget, 427; civil-service confirmation of mayor's appointments, 428, 459-460, 461; number of administrative departments, 457; police organization, 474; high cost of police department, 478; fire department and commissioner, 482; training school for firemen, 482; high cost of fire department, 484; maximum consumption of water, 506; source of water, 507; organization of water department, 509; debts for sewerage, 517; sliding scale for gas rates, 519; construction of subways, 520
- Boulder, Colorado, adoption of proportional representation, 102
- Bouvier, Law Dictionary, 327 n.
- Boynton, W. E., "Proportional Representation in Ashtabula," 403 n.
- Bradford, E. S., Commission Government in American Cities, 431 n.
- Bridgeport, Connecticut, commission government rejected by, 432
- Brodnax v. Missouri*, 276
- Brookline, Massachusetts, population, 333
- Brooklyn, removal of council confirmation from mayor's appointments, 420 n.
- Brown v. Maryland*, 10
- Bryce, James, American Commonwealth, 394 n.
- Buck, A. E., in *National Municipal Review*, 232 n.
- Budget system, in the states, 232-235; types, 232-233; executive type, 233-235; control of city council, 416-417; control of mayor, 426-427; in Dayton city-manager plan, 450; municipal essentials of, 545-546; practice in New York City, 546-547
- Buffalo, contains bulk of county population, 318; may not adopt optional charter, 382; commission government in, 432; salary

- of commissioners, 434; power of mayor, 437; high cost of police, 479; cost of public-health work, 490; cost of streets, 500; source of water supply, 508; county poor relief, 529
- Building department in cities, 490
- Business taxes, 229
- Buttrick v. City of Lowell*, 475
- California, estimated wealth, 5; amendment of constitution by referendum, 35, 36; suffrage qualification, 42; effect of suffrage qualification, 45; nonpartisan primaries, 67 n., 68; regulation of campaign expenses, 87-88; emergency legislation, 118, 119; no amendment of laws adopted by the initiative, 122; effect of direct legislation, 124; recall, 126, 127; governor's salary, 134; governor's veto power, 137, 138; administrative reorganization, 165; publication of textbooks, 175; no distinction between legal and equitable remedies, 245-246; recall of judges, 283; area of largest county, 318; jurisdiction of county courts, 325; local assessors, 330 n.; special legislation for cities forbidden, 370; municipal home rule, 370, 384, 447; recall in cities, 408; municipal debt limits, 549
- Cambridge, Massachusetts, commission government rejected by, 432; garbage disposal, 513
- Campaigns, political, conducted by state committees, 48-49; effect of direct primary on expense of, 72-73; in the states, 77-91; definition, 77; kinds, 77-78; management, 78-79; methods, 79-81; textbook and publicity pamphlet, 80; use of money in, 81-89; regulation of expenses by states, 86-89
- Candidates for office, multiplicity of, 59; effect of direct primary, 70-71, 72; relation to party committee, 78-79; regulation of campaign expenses, 87-89; judges as, 279
- Canton, Ohio, source of water supply, 507
- Channing, Edward, *History of the United States*, 309 n.
- Charities, public, 176-177; state supervision of public, 177-178; private institutions, 177; state supervision of private institutions, 178-179; state boards, 179; administrative boards of control, 179-180; administration by counties, 324; in cities, proper control of state over, 390; poor relief, 529-530; hospitals, 530-531; care of children, 531; department of charities, 531
- Charleston, South Carolina, negro population, 349 n.; school expenditures, 528; poor relief, 529
- Charters, relation of colonial to state constitutions, 18-19; in Connecticut and Rhode Island, 21; in boroughs, 313 n., 359-360; in cities, after the Revolution, 363; control of state legislatures over, 367, 370, 374-375; independence of cities in framing, 372; contents, 375-376; home-rule, 384-387
- Chattanooga, Tennessee, mayor's veto in commission government, 437
- Checks and balances, in early state constitutions, 25; in early city charters, 363; not present in commission form of government, 441
- Chicago, contains bulk of county population, 318; representation on county board, 322; population more trading than industrial, 346; area, 346; first waterworks, 367; independence of water board in 1851, 368; size of council, 411; state control over police in 1861, 420, 475; term of mayor, 421; mayor's salary, 423; number of administrative departments, 457; civil service in, 467; fire loss, 479 n.; fire department and commissioner, 482; training school for firemen, 482; board of health established, 485; source of water supply, 508; debt for sewerage, 517; appointment of school board, 523
- Child labor, 187-188
- Childs, R. S., *Short-Ballot Principles*, 96 n.
- Cincinnati, contains bulk of county population, 318; per-capita fire

- loss, 479 n.; first steam fire-engine, 482; water purification, 508
- Cities, discrimination against, in bicameral state legislatures, 202-203; special courts in, 270; characteristics in America, 345-358; definition, 345; reasons for existence, 345-346; area, 346-347; population, 347-348; death rate, 348; aliens, 349-351; distribution of sexes, 351-352; distribution of ages, 352; health in, 354-355; intellectual standards, 356-357; ownership of property, 357; moral standards, 357-358; humanitarian movements in, 358; relation to the states, 374-392; powers granted by charter, 376-377; liabilities, 377-378; special legislation for, 378-383; home rule, 383-388; proper control of state over, 388-392; as political units, 393-408; governmental organization, 409-453; administration, 454-550; expenditures, 542-547; debts, 548-550; revenues, 534-542
- Citizens' Union in New York City, campaigns conducted by, 405, 406
- Citizenship of the United States, privileges and immunities, 12-13; as qualification for voting, 41-42, 394
- City manager, in Dayton, 448-450; powers, 449-450; expertness, 452
- City-manager plan, of municipal government, 372-373, 445-453; definition, 445-446; development and spread, 446; method of adoption, 446-447; Dayton plan (*see* Dayton); Ashtabula plan, 451; results, 451-453; control over appropriations and expenditures, 545
- City Managers' Year Book, 452
- City planning, meaning, 491-492; progress in America, 492-493, 496; boards, 493; difficulties, 494-495; cost, 495
- Civil Rights Cases*, 239
- Civil-service regulations, for making appointments in states, 141; examinations, 141; removals, 141-142; results, 142; beginnings of, in cities, 371; for appointments of mayor, in Boston, 428, 459-460, 461; municipal, types of commissions for, 466-467; Massachusetts plan, 467; principles, 467-468; use in connection with promotions and dismissals, 468
- Clark, W. L., *Elementary Law*, 246 n., 256 n.; *Contracts*, 259
- Classification of property for taxation, 538
- Clerks, county, 329; of court, 329; town, 336; in colonial boroughs, 361
- Cleveland, contains bulk of county population, 318; independent executive departments, 368; state control of police force, 475; small expense of police, 478-479; city planning, 496; maximum consumption of water, 506; source of water supply, 508; sliding scale for determining trolley fares, 519
- Cleveland, Frederick A., "Evolution of the Budget Idea in the United States" and "Constitutional Provision for a Budget," 232 n.
- Climate of the states, 5
- Close corporations, in colonial boroughs, 360-361; after the Revolution, 363
- Coker, F. W., "Safeguarding the Petition in the Initiative and Referendum," 109 n.
- Colorado, amendment of constitution by referendum, 35; woman suffrage adopted, 40; exclusion of appropriations from referendum process, 119; recall, 126; governor's power of removal, 143; martial law in, 145; use of militia in strike, 170; regulation of mining industry, 185; recall of judges, 283; recall of judicial decisions, 283; municipal home rule, 447
- Colorado Springs, mayor's veto under commission government, 437; sewage farm, 516
- Columbia, South Carolina, school expenditures, 528 n.
- Columbus, Ohio, water softened in, 507; water purification in, 508
- Comity among the states, 13

Commission, as organ in commission plan of government, 433-435; in city-manager plan, 447-448, 451

Commission government of cities, 372, 430-444; principles, 430; origin and spread, 431-432; methods of adopting, 432-433; the commission, 433-435; administrative departments, 435-436, 466; mayor, 436-437; appointive officers and independent departments, 438; popular control over, 438-480; merits and faults, 441-443, 445-446; results, 443-444; control over appropriations and expenditures, 545

Committees, of political parties, state, 47-50; local, 50-51; relation to candidates during campaigns, 78-79; state control over campaign expenses of, 88; of the state legislatures appointed by speaker, 209; on rules, 209; varieties of, 210-213; conference, 212, 219-220; consideration and report of bills, 219; party control over, 221; in city councils, 414-415; conduct of administration by, 454-457

Common law, 242-244; misdemeanors under, 254-256; relations in marriage, 262; remedies, 266; procedure in civil cases, 295-297; evidence, 299 n.

Commons, J. R., Proportional Representation, 45 n., 102 n., 202 n.

Comptroller. *See* Auditor

Condemnation proceedings for acquiring land for streets, 498-499

Conference of governors, 146

Connecticut, constitution of 1818, 19; constitutional convention, 32; suffrage qualification as to education, 42; no direct primaries in, 68 n.; provincial governor and council, 132; pardoning power, 144; state police, 171; appointment of board of education, 173; secretary of board of education, 174; compulsory education, 175; early health boards, 182; representative districts, 201; discrimination against cities in legislative apportionment, 202; annual sessions of legislature, 202;

no distinction between legal and equitable remedies, 245-246; county taxes, 321; appointment of county clerks, 329; appointment of county treasurer, 330 n.; duties of town clerks, 336; school districts in towns, 336

Constable, in New England towns, 337; in Western county districts, 341

Constitution, Federal, recognizes importance of the states, 3-4; purposes of a body politic in preamble, 7; creates federalism, 8; distribution of powers in, 8-17; obligations and prohibitions on the states, 9-13; supremacy of, 16-17; relation to state constitutions, 18; provisions as to suffrage, 40; limitations on state legislatures, 195-196; limitations on state taxing powers, 229; limitations on state lawmaking, 238-239, 241; defines treason 252; relation to state courts, 269, 275-277, 284; conflict of state law with, 302; influence on city government, 363, 380; limitation on city-planning operations, 404

Constitutions, state, 18-36; importance, 18; origin, 18-19; early, 19-21; fundamental principles, 21-26; classification, 26; similarities in, 26-27; increasing length, 27-28; typical contents, 28-30; amendment of, by legislatures, 222-223; limitations on taxing power, 230; limitations on debts, 235-236; limitations on legislation, 242; conflicts of state law with, 301-302; limitations on cities, 380

Contracts, prohibitions upon state regarding, 10-12; interstate recognition of, 13; as part of state law, 259-261; consideration required in, 259 n.; definition, 259-260; of counties, 318-319; liabilities of cities for, 377

Convention, party, in the states, 51-55; activities, 51-53; advantages, 53-54; disadvantages, 54-60

Conventions, constitutional, early, 20-21; provided in later constitutions, 31-35; composition, 33;

- powers, 33-34; limitations, 35; procedure, 35
- Coroner, 329
- Corporations, provisions regarding, in state constitutions, 30; contributions to campaign funds, 84, 88, 89; state regulation, 190-193; regulation of banking and insurance and securities, 191; regulation of public utilities, 191-194; regulation of railroads, 192; limited powers of legislature to grant franchises, 197; taxation, 228-229; legal definition, 263-265; counties as, 318-319; New England towns as, 333, 360; school districts in central and Southern states as, 339, 340; municipal, 345, 374-375; chartered by colonial boroughs, 360
- Correctional institutions, 180-182; state supervision of, 180; problems, 180-182; municipal department of corrections, 531-532
- Corrupt and illegal practices, comparison between Great Britain and the United States, 85-86; prohibition by various state acts, 86-89; prohibition by congress, 87; effect, 89
- Council, city, proportional representation used for elections, 101; in colonial period, 360-361; later development, 363, 365, 367-369, 370; history, 409-410; decline, 410; size and terms, 411; character of members and salaries, 412; how chosen, 412-413; organization and procedure, 414; committees, 414-415; powers, 415-418; influence, 418-419; in commission government, 433-435; in city-manager plan, 447-448; conduct of administration by, 454-457; election of administrative heads by, 458; confirmation of mayor's appointments, 458; power of appropriation, 544-547
- Council, governor's, in the states, confirms appointments, 140, 280, 325; acted as check on colonial legislatures, 140
- County, unit for administration of education, 172; superintendent for, 172-173; unit for legislative representation, 201-203; courts, 271, 325-326; sheriff as judicial officer, 284-285, 327-329; in England, 309; in the colonies, 310-313; general characteristics, 317-320; definition, 317; a corporation, 318-319; powers and functions, 319-320, 529; seat of, 320; government, 321-322, 332; types of board, 321-322; powers of board, 323-325; administration of justice, 325-329; prosecuting attorney, 326-327; coroner, 329; clerks, 329; assessors, 330; treasurer, 330-331; auditor, 331; registrar of deeds, 331-332; school officials, 332; districts as subdivisions in South and West, 339-341
- County seat, 320
- Courts, county, 271, 319, 325-326; clerks, 329
- Courts, municipal, 270, 531-532
- Courts, state, in early constitutions, 21; subject to popular sovereignty, 23-24; relation to boards and commissions, 162-163; system and structure, 268-290; under justices of the peace, 269-270; intermediate, 270-271; probate, 271; appellate, 271-272, 298; juvenile, 272-274; domestic-relations, 274; small-claims, 274-275; land, 275; night, 275; women's, 275; relation to federal courts, 275-277; judge, 277-284; clerks, 284; sheriff, 284-285, 328-329; jury, 285-289; prosecuting attorney, 289-290, 326-327; procedure in criminal cases, 291-295; procedure in civil cases at common law, 295-297; procedure at equity, 297-298; procedure in appeals, 298-301; power to declare statutes unconstitutional, 301-302; control of administration, 302-304; as agents of self-government, 304-305; as means of state control over cities, 391
- Craig v. Missouri*, 9
- Criminal law, 251-256; definition of crime, 251-252; treason, 252; felonies, 252-254; misdemeanors, 254-256; procedure of courts, 291-295
- Cumulative voting, use in Illinois, 200

- Cyclopedia of American Government, 26, 101 n., 151 n., 154 n., 272 n., 301 n.
- Dallas, Texas, mayor's veto in commission government, 437
- Dartmouth College Case, 11, 190, 204
- Dayton, Ohio, city-manager plan of government, 446, 447-451; the commission, 447; the mayor, 447-448; the city manager, 448-449; administrative departments, 450, 458, 466; financial provisions, 450-451; revenue from miscellaneous sources, 534 n.
- Dealey, J. Q., Growth of State Constitutions, 18 n., 19 n., 31 n., 32 n.; classification of state constitutions, 26
- Death rate, in London, 348; in cities, 351-352, 354-355
- Debate, freedom of, in state legislatures, 218; in New England town meetings, 334-335
- Debts, state, 235-237; limitations, 235-236; payment through sinking funds, 236-237; payment through serial bonds, 237; municipal power of council to incur, 416-417; in general, 548-550; amount, 548-549; limits, 549-550; payment, 550
- Delaware, Maryland, early constitution framed by convention, 20; term of governor under early constitution, 20; appointment of judges under early constitution, 21; amendment of early constitution, 31; suffrage qualification in, 42; no direct primaries, 68 n.; appointment of secretary of state, 150; size of lower house, 203; no compensation paid to legislature, 206; business taxes, 229; appointment of judges, 325; hundreds, 340; no commission-governed cities in, 432
- Delegates to state conventions, character and type of, 54; nominated by primaries, 63
- Democratic party, organization of, in New York County, 57-58
- Demurrer, 296
- Denver, juvenile court, 272; city and county boundaries coincide, 318; garbage disposal, 513 n.
- Departments, in cities, growth of special, from 1850 to 1870, 367-368; under commission government, 435-436; administrative, 445-463; in city-manager plan, 449-450; control of council over, 455-457; number, 457-458; heads, 458-462; organization, 462; correlation, 462-463; subordinate officials and employees, 463-469; civil service, 466-469; and labor unions, 469; police, 470-479; fire, 479-485; health, 485-490; building, 490; city planning, 491-496; streets, 496-505; water, 505-511; waste disposal, 511-513; sewerage, 513-517; public utilities, 517-521; education, 522-529; charities and corrections, 529-532
- Des Moines, plan of commission government and direct legislation, 407, 431; election of commissioners, 434; assignment of departments, 435; popular control by means of direct legislation in, 438-439
- Detroit, representation on county board, 322; popular election of mayor in charter of 1824, 364; state control of police force, 475; fire board, 482
- Dacey, A. V., Law of the Constitution, 23 n.
- Dillon, J. F., Law of Municipal Corporations, 374 n., 375 n., 376 n., 378 n., 383 n., 384 n.
- Direct legislation. *See* Initiative and referendum
- Direct method of street construction, 502
- Diseases, activities of health departments against, 487-489
- Dismissal of municipal employees, 468
- Distribution of powers in the United States, 9-13
- Districts, election, in the states, 45-46; county, in South and West, 330-341
- Divorce, recognition of, among the states, 13; as legal measure, 261-262
- Dodd, W. F., Revision and Amendment of State Constitutions, 18 n., 31 n., 32 n., 33 n.
- Domestic relations, as part of state law, 261-262; termination of,

- 261-262; legal status in, 262; court of, 274. *See also* Divorce
- Dubois, W. E. B., "The Social Effects of Emancipation," 44 n.
- Due process of law, meaning in Fourteenth Amendment, 12, 239
- Dutton, S. T., and Snedden, David, Administration of Public Education in the United States, 522 n.
- East Chicago, Illinois, revenue from special assessments, 534
- Eddy, H. P. *See* Metcalf, Leonard
- Education, as qualification for suffrage, 42-44, 342, 396; administration in the states, 172-176; school districts and county as units, 172; county superintendent, 172-173; state supervision, 173; state boards, 173-174; state superintendents, 174-175; financial aid of state in, 175; compulsory, 175; training of teachers, 176; state universities and libraries, 176; control over, by counties, 332; school committees in towns, 336; school districts in townships, 339; school districts in Southern and Western counties, 340-341; school districts in cities, 365; early school systems in cities, 367; proper control of state over, 389; under commission government, 438; separate from other municipal administration, 457; and public health, 489; organization of school department, 522-523; school board, 523-524; superintendent, 524-525; teachers, 526-527; school plant, 527; functions of school system, 527-528; finance, 528-529. *See also* Schools
- Edwards, G. E., The Grand Jury, 285
- Election, of governor, 133; of lieutenant governor, 150; of secretary of state, 150; of attorney-general, 151; of state treasurer, 152-153; of auditor or comptroller, 153; of county superintendent of education, 172-173; of state judges, 278-280, 282; of county judges, 325; of municipal judges, 532; of prosecuting attorneys, 326; of sheriffs, 327; of coroner, 329; of county clerks and clerks of court, 329; of county treasurer, 330; of town officers, 334, 335, 336; of mayor, 363, 364-365, 421; of council, by wards, 412-413; of council, at large, 413; of council, by a combination method, 414; of commissioners under commission government, 434; of mayor in commission government, 436; of commissioners under city-manager plan, 447, 451; of mayor under city-manager plan, 447; of city manager under city-manager plan, 448-449; of heads of administrative departments, 458; of school boards, 523; of overseers of the poor, 530
- Elections, frequency of, 59; laws governing, 89-91; officers for, 89-90; official forms for returns, 90; policing of polls, 90-91; registration necessary for voting in, 91; secrecy, 91; ballot at, 91-99; absent voting, 99-100; preferential voting, 101-102; proportional representation, 102-104; submission of initiative and referendum measures at, 119-120; duties of county boards, 324-325; in New England town meetings, 334; in townships, 338; control of state over, in cities, 388-389; municipal, general conduct of, 401-403
- Electorate, organization, 39-60; divided into districts, 45-46; action, 61-76; campaigns, 77-91; and the ballot, 91-99; absent voting, 99-100; preferential voting, 101-102; proportional representation, 102-104; initiative, referendum, and recall, 105-128; effect of referendum on, 123-124; action in choosing judges, 278-279; municipal, 393-403
- Emergency legislation and the referendum, 117-119
- Eminent domain, 249, 498
- Employees, municipal, number, 464; influence of politics on appointment, 465-466; civil-service reform, 466-468; promotion and dismissal, 468; pensions, 468-469; connection with labor unions, 469

- England, corrupt and illegal practices in, 85-86; common law, 242-244; equity, 244-245; local institutions as basis for American, 309-310, 313; residence requirement for voting, 396; service on council committees, 415; term and power of mayors, 422 n.; mayor's salary, 423; mayor's business experience, 424; mayor has no veto power, 425; conduct of municipal administration in, 454, 456, 461; municipal ownership, 521; poor relief, 529
- Equal protection of the laws, meaning in Fourteenth Amendment, 12
- Equity, 244-246; remedies in, 267; procedure in civil cases, 297-298; in financial matters, 298 n.; evidence, 299 n.
- Ex post facto law, 11
- Excess condemnation, 498-499
- Executive department, governor, 131-148; decentralization, 131-132; state administration, 149-193; composition, 149-153; relation between branches and to other departments, 154, 161-163; mayor, 360, 363, 364-365, 370, 372-373, 410-420, 430-438, 443, 447-448; municipal administration, 454-550
- Expenditures of cities, for police, 478-479; for streets, 499-500; for water supply, 510; for sewerage and sewage disposal, 517; for schools, 528-529; general, 533, 542-547; steady increase, 542-543; appropriations, 544; control and disbursements, 544-545; budgets, 545-547
- Expenditures of states, 230-235; causes of increase, 231; budget system, 232-235
- Experts, in city government, city manager, 452; heads of administrative departments, 459; in connection with board system, 462; school superintendent, 525
- Extradition, 13
- Fairlie, J. A., "The State Governor," 132 n., 147 n.; "Veto Power of the State Governor," 136 n.; "Revenue and Financial Administration," 152 n.; in *American Political Science Review*, 164 n.; Local Government in Counties, Towns, and Villages, 310 n., 314, 316 n., 319, 321 n., 322, 323 n., 326 n., 327, 330 n., 331 n., 333 n., 337 n., 339 n., 341 n.; Essays in Municipal Administration, 359 n., 381, 419 n.; Municipal Administration, 362 n., 364 n., 365, 368 n., 409 n., 419 n., 471 n., 474 n., 479 n., 482 n., 484 n., 542 n.
- Fall River, Massachusetts, death rate of children, 351
- Federal government, created by Constitution, 8; powers delegated to, 8-9, 14; prohibitions on, 14-15; commerce regulations, 15-16; supremacy, 16-17; regulation by Congress of campaign expenses, 87; relation of laws to state laws, 238-239, 275-277; juvenile court laws, 272 n.; Judiciary Act of 1916, 276, 284
- "Federalist, The," 25
- Felonies, 252-254
- Filtration, of water supplies, 508-509; of sewage, 515-516
- Finance, clauses in state constitutions relating to, 29; passage of legislation regarding, 220; state, 225-237; revenue, 225-230; taxation, 225-230; expenditures, 230-235; budget system, 232-235; debts, 235-237
- Finance, county, administration of, 310, 323-324; officers, 330-331
- Finance, municipal, in colonial boroughs, 362; later, 365, 371, 533-550; proper control of state over, 389; powers of city council, 416-417; powers of mayor, 426-427; in commission-governed cities, 443-444; provisions in Dayton city-manager plan, 450-451; results of city-manager system, 452; cost of police, 478-479; expense connected with city planning, 494-495; cost of streets, 499-500; cost of paving and sidewalks, 504; cost of water supply, 510; cost of sewerage and sewage disposal, 517; cost of schools, 528-529; cost of municipal government, 533; revenues, 534-542; expenditures, 543-547; accounting, 547-548; debts, 548-550

- Finley, J. H., and Sanderson, J. F., American Executive and Executive Methods, 132 n., 136 n., 154 n.
- Fire, protection against, in cities, 365, 366-367, 481-484; loss from, 479-480; prevention, 480-481; personnel of fire department, 482; appliances for fighting, 482-483; apparatus for fighting, 484; cost of fire department, 483-484
- Florida, percentage of registered voters, 45; limitation on legislative action, 135; governor's power of removal, 143; appointment of county judges, 325; election districts, 340; special statutes relating to cities forbidden, 367
- Foreign affairs, prohibition on states from engaging in, 9
- Fosdick, R. B., American Police System, 471 n.; European Police Systems, 471 n.
- France, term of mayor, 422; no residence requirement for voting, 396; conduct of municipal administration in, 454
- Franchises, power of city council over, 417; taxation of, 228-229, 539-540; elements of, authorities granting, 518; duration, 518-519; regulation of rates, 519-520; reversion of plant, 520
- Freemen in colonial boroughs, 361
- Frothingham, L. A., Brief History of the Constitution and Government of Massachusetts, 211 n.
- Galveston, Texas, origin of commission government in, 372, 430-431; salary of commissioners, 435
- Gans, H. S., "The Public Prosecutor," 326 n.
- Garbage, disposal of, 513
- Gardner, C. O., "Problems of Percentages in Direct Government," 114 n., 121 n.
- General-property tax, 225-227, 535-537
- Georgia, foreign-born in, 4; framing of early constitution, 20; bicameral legislature provided under early constitution, 21; election of judges under early constitution, 21; suffrage qualification, 42; direct primaries, 682; majority vote required for election of governor, 133; annual sessions and term of legislature, 203; business taxes, 220; debt restrictions, 235; election of judges, 278, 325; organization of counties, 322; jurisdiction of county courts, 326; militia districts, 340
- Germany, present age qualification for suffrage, 40; term and power of burgomaster, 422 n.; burgomaster's salary, 423; burgomasters as administrators, 424; conduct of municipal administration in, 454
- Gerrymander in legislative apportionment, 202
- Goodnow, F. J., Principles of the Administrative Law of the United States, 302 n.; Municipal Home Rule, 374 n., 379 n., 383 n.; Politics and Administration, 464 n.
- Goodnow, F. J., and Bates, F. G., Municipal Government, 345 n., 349, 351 n., 356 n., 374 n., 376 n., 377 n., 379 n., 383 n., 409 n., 415 n., 419 n., 422 n., 470 n., 471 n., 472-473, 474 n., 484 n., 491 n., 519 n., 520 n., 523 n., 533 n., 547 n., 548 n.
- Governor, state, in early constitutions, 20-21; in general, 131-148; colonial, 132; election, 132-133; term, 133; removal, 133-134; salary, 134; legislative powers, 134-139; the veto, 136-139; power of appointment, 139-144; council as check, 140, 190, 280, 325; power of removal, 142-143, 328; power of pardon, 144; military power, 144-145; as representative of the state, 146-147; types of, 146-147; in popular estimation, 147-148; relation to boards and commissions, 162; duty toward law enforcement, 169-171; influence of, on legislation, 213-214; approval, 220; prepares budget, 233-235; appoints judges, 278, 280-281, 325, 326
- Grand jury. *See* Jury
- Grandfather clause, in regard to the suffrage, 43-44
- Grand Rapids, Michigan, city-manager plan in, 446

- Greene, E. B., *The Provincial Governor*, 131 n.
- Greenville, Texas, mayor's veto in commission government, 437 n.
- Guinn v. United States*, 43
- Habeas corpus, writ of, 266
- Hadley, A. T., *Economics*, 353 n.
- Hamilton, Ohio, revenue from public-service enterprises, 534 n.
- Hand, Learned, "The Elective and Appointive Methods of Selection of Judges," 278 n.
- Harlan, Justice, on the police power, 276
- Hart, Hastings H., plan for juvenile court, 272; *Preventive Treatment of Neglected Children*, 272 n.
- Hartford, Connecticut, keeps its town organization, 333-334; establishes first city-planning commission, 493
- Hatton, A. R., "The Ashtabula Plan," 102 n., 451 n.
- Haynes, G. H., Initiative and Referendum, 105 n.; "People's Rule," 110 n.; Representation in State Legislatures, 200 n., 207 n.
- Hazen, Allen, *Clean Water and How to Get It*, 505 n., 508 n.
- Heads of municipal departments, Boston plan, 428, 459-460; method of choice, 458; qualifications, 459; terms, 460-461; removals, 461; salaries, 461; board or commissioner, 461-462, 476, 482, 486, 509, 516, 522-523, 530, 531. *See also* Administration
- Health, regulation of industry on ground of, 185-186; insurance, 187; in cities, 355-356. *See also* Public health
- Highpoint, North Carolina, veto of mayor in commission government, 437
- Hoar, R. S., *Constitutional Conventions*, 18 n., 33 n.
- Hobson, J. A., *Evolution of Modern Capitalism*, 355 n.
- Holcombe, A. N., *State Government*, 14 n., 21 n., 36 n., 44-45, 46 n., 82, 85 n., 86 n., 88, 102 n., 105 n., 121, 132 n., 136 n., 138 n., 149 n., 158 n., 200 n., 210, 212, 213 n., 217 n., 278 n., 301 n., 302 n., 304 n., 305 n., 397 n.; on popular sovereignty, 22
- Holmes, Justice, on interference of Fourteenth Amendment with the states, 276-277
- Holyoke, Massachusetts, revenue from public-service enterprises, 534 n.
- Home rule, municipal, 372, 383-388; extent of, 384-385; charter-making, 385; limitations on charter-making, 385-386; choice of officers, 386-387; municipal functions, 387; political relation of city to state, 387-388; adoption of commission government under, 433; adoption of city-manager plan, 447
- Hospitals, 530
- Houston, Texas, adoption of commission government, 431; mayor's power of appointment, 437; mayor's veto, 437 n.; election of fiscal officers, 438
- Howard, G. E., *Introduction to the Local Constitutional History of the United States*, 310 n.
- Hull, R. M., "Preferential Voting and How it Works," 101 n.
- Humphrey, J. H., *Proportional Representation*, 102 n.
- Hurd, Harvey H., plan for juvenile courts, 272
- Idaho, vote required for amendment of constitution, 32; woman suffrage adopted, 40; nonpartisan primaries, 67; preferential voting required for party elections, 73; recall in, 126, 127; administrative reorganization, 166; department of law enforcement provided, 169; term of legislature, 203; granting of divorce in, 262
- Illinois, estimated wealth, 5; vote required for amendment of constitution, 32; absent voting, 100; proportional representation, 102; governor's term, 133; governor's salary, 134; governor's power over legislature, 135; reorganization through administrative code, 164; regents of state university, 176; cumulative voting in election of legislature, 200; size of upper house, 203; salaries of legislators, 206; meetings of committees, 211 n.; debt restrictions,

- 235-236; juvenile courts, 272; small-claims courts, 274 n.; administration of poor relief by county, 324; county courts, 326; treasurer of Cook County, 330; assessment of property, 330 n.; township officers, 338; villages, 341; special legislation for cities forbidden, 370; referendum on special legislation for cities, 383, 407
- Illinois, Report of the Efficiency and Economy Committee, 152 n.
- Immigration, effect on cities, 349-351, 356
- Immunities. *See* Privileges and immunities, etc.
- Impeachment, of governor, 133; of judges, 282
- Incineration, of rubbish, 512; of garbage, 513
- Income tax, state, 227-228, 538-539
- Indiana, vote required for amendment of constitution, 32; constitutional convention provided, 32; residence qualification for voting, 41; publicity pamphlets, 80 n.; ballot used, 93; absent-voting law, 100; governor's term, 133; administrative consolidation, 166; county superintendent of education, 172-173; attitude of courts toward legislative apportionment, 203; no distinction between legal and equitable remedies, 245-246; early local government, 314; township meetings, 338; township trustees, 338; villages, 341; extension of suffrage to noncitizens, 394; no commission-governed cities, 432; municipal debt limits, 549
- Indianapolis, low expenditures for public-health work, 490
- Indictment by grand jury, 286-287, 292
- Initiative, use of, for amending state constitutions, 36-37; in Massachusetts, 36; definition of 106; constitutional, 108; direct 108-109; indirect, 109; petitions, 109-116; framing of measures, 110-111; submission, 116; effect on state legislature, 223-224; in connection with commission government, 438-439; in city-manager plan, on ordinances, 448
- Initiative and referendum, for amending state constitutions, 35-36; in general, 105-126; distinction between, 106; varieties, 106-109; common features, 109; the petition, 109-116; and emergency legislation, 117-119; in relation to the legislature, 196; effect on legislature, 223-224; in cities, 406-408; as means of popular control over commission government, 438-440; city-manager plan, 448
- Injunction, writ of, 267
- Insurance, health, 187
- Insurance companies, regulation by state, 191
- Intangibles, taxation of, 226-227, 537-538
- International law as part of state law, 242
- Interstate Commerce Commission of the United States, conflict of state commissions with, 192
- Iowa, estimated wealth, 5; revision of constitution, 33; suffrage conditioned on residence, 41, 395; no classes disqualified from voting, 44; nonpartisan primaries adopted, 67; election, 73, 74; type of ballot used in, 93-94; county superintendent of education, 172-173; representative districts, 201; debt restrictions, 235-236; township meetings and boards, 338; villages, 341; special statutes for cities, forbidden, 367; commission-government law for cities, 431, 434; taxation of intangible property, 538
- Italy, no residence requirement for voting, 396; term of mayor, 422; conduct of municipal administration, 454
- Jacksonville, Florida, negro population in, 349 n.; revenue from public-service enterprises, 534 n.
- James, H. G., *Local Government in the United States*, 310 n., 317 n., 319 n., 321 n., 323 n., 326 n., 327 n., 333 n.
- Jameson, J. A., *Treatise on Constitutional Conventions*, 18 n.

- Jersey City, commission government in, 432; poor relief administered by county, 529
- Johnson, L. J., "Preferential Voting," 101 n.
- Jones, C. L., Statute Law-making in the United States, 212 n.
- Journals of the Continental Congress*, 19 n.
- Judges, county, 325
- Judges, state, how chosen in early constitutions, 21, 278; may not be removed by governor, 143; functions, 277; relation to jury, 277, 286, 289 n.; method of choice, 278-281; terms, 281; removal, 282-283; charge of, in criminal cases, 293-294; sentence pronounced by, 294-295
- Judicial review, effect, in state constitutions, on separation of powers and popular sovereignty, 25-26; of the powers and acts of administrative officers, 302-304; in England, 309-310. *See also* Supreme Court
- Jury, decision of facts and law by, 277; may ask judge for further instructions, 277 n.; in general, 285-289; actual working of system, 288-289; merits, 289; selection, 292-293; verdict, 294, 296; as agency of self-government, 304-305; coroner's, 329
- Jury, grand, 285-287
- Jury, petit, 287-288
- Justices of the peace, jurisdiction, 269-270; in New England towns, 336-337; in townships, 339; Southern and Western county districts, 340, 341
- Juvenile courts, origin and development, 272; purpose and principles, 273; procedure, 273-274
- Kalamazoo, Michigan, adoption of proportional representation, 102; effect of proportional representation, 403
- Kansas, nonpartisan primary adopted, 67; recall, 126; term of governor, 133; administrative consolidation, 165; county superintendent of education, 172-173; publication of textbooks, 175; regulation of securities, 102; compensation paid to legislators, 206; small-claims court, 274 n.; recall of judges, 283; township meetings, 338; villages, 341; special legislation for cities forbidden, 367; extension of franchise to noncitizens, 394
- Kansas City, Kansas, revenue from public-service enterprises, 534
- Kentucky, compensation paid to legislators, 206; county courts, 271; early local government, 314; governor's veto in constitution of 1790, 316; organization of counties, 322; jurisdiction of county courts, 326; appointment of county treasurer, 330 n.; magisterial district, 340
- Kimball, Everett, National Government, 8, 23 n., 77 n., 146 n., 239 n., 388 n.
- Kittery, Maine, chartered as colonial borough, 359
- Labor, provisions regarding, in state constitutions, 30; connection of municipal employees with unions, 469
- Labor law, state administration of, 185-189; workmen's compensation laws, 186-187; health insurance, 187; regulation of hours, 187; child labor, 187-188; minimum wages, 188; conciliation and arbitration, 188
- La Follette, Robert M., governor of Wisconsin, recommendation as to lobbyists, 215-216
- Law, supremacy in state constitutions, 23-24; definition, 231, 239-240; distinction in state constitutions between statutory and constitutional, 28; affected by the use of direct legislation in amending constitutions, 36; martial, 145; enforcement in states, 168-172; enforcement by governor, 169; enforcement by agents of governor, 169; enforcement by militia, 170-171; enforcement by state police, 171; enforcement by boards and commissions, 171-172; importance of state, compared with federal, 238-239; statutory, 241-242; international, 242; the common law, 242-244; equity, 244-246; rights of persons and prop-

- erty, 246-251; criminal, 251-256; torts, 256-259; contracts, 259-261; domestic relations, 261-262; partnerships and corporations, 262-265; remedies, 265-267; substantive and adjective, 265
- Law, state, sources, 238-246; federal limitations on, 241; state limitation on, 242; rights of persons and property, 246-251; criminal, 251-256; torts, 256-259; contracts, 259-261; domestic relations, 261-262; partnerships and corporations, 262-263; remedies, 265-267; conflicting with federal law, 271-272, 275-277, 284, 301-302; may be declared unconstitutional by the courts, 301-302
- Lawrence, Massachusetts, foreign-born population, 349
- Legislation, special, 197-198; of the state legislatures, 213-224; the lobby, 214-216; the legislative reference bureau, 216-217; drafting, 217; amount, 217-218; procedure in enacting, 217-220; financial, 220; party influence on, 220-222; strike, 222; quality, 223-224; financial, 231-232; power of city council to pass, 415-418; powers of mayor, 425-426. *See* Law, state; *see also* Special legislation
- Legislative reference bureaus, 216-217; in Wisconsin, 216
- Legislature, state, in early constitutions, 21; restrictions on, in state constitutions, 27, 196-198; bicameral, 21, 198-200; power to amend constitutions, 31-32; power of governor over, 135-139; relation to boards and commissions, 161-162; in general, 194-224; importance, 194-195; restrictions on, in Federal Constitution, 195-196; table of members, terms, sessions, and salaries, 204-205; apportionment, 200-203; size, 203; sessions, 203, 206; terms, 203-204; salaries, 206; work, 207-224; officers, 207-210; speaker of lower house, 207-209; committee system, 210-213; Massachusetts committee system, 210-211; normal committee system, 211-212; New York system, 212-213; lawmaking by, 214-222; framing constitutional amendments, 222-223; effect of direct legislation on, 223-224; connection with budget system, 233; election of judges by, 280, 325; city charters granted by, 363; control over municipal taxation, 366; control over city charters, 367, 370, 372, 374-375, 376; control over municipal administration, 368, 369; control over cities, 374-392; restrictions on control over cities, 380-388; proper exercise of control over cities, 388-390; methods of control over cities, 390-391
- Lewis, Howard T., in *National Municipal Review*, 166 n.
- Lewis, N. P., *The Planning of the Modern City*, 491 n.
- Liability, of the county for damages due to negligence, 318-319; of cities for contracts, 377; of cities for torts, 378
- Liberty, meaning in Fourteenth Amendment as interpreted by the courts, 11-12
- Libraries, state, 176
- License Cases*, 15, 249
- Lieutenant governor, 134, 150; presides over state senate, 207
- Lincoln, President, on popular sovereignty, 22, 39
- Lindsey, Ben B., as judge of juvenile court, 272, 274; "My Lesson from the Juvenile Court," 272 n.
- Literacy, as qualification for the suffrage, 42; in cities, 356-357
- Lobby, in state legislatures, 214-216; regulation of, 215-216; perversion of legislation by, 222
- Local government, evolution in United States, 309-316; based on English institutions, 309-310; beginnings in America, 310; county type, 310-311; New England type, 312; mixed type, 312; colonial boroughs, 313; effect of Revolution on, 313-314; extension to the territories, 314; recent developments, 315; extent, 315-316; New England town, 333-337; townships in central states, 337-339; county districts in South and West, 339-341;

- villages and boroughs, 341-342; municipal government, 345-354
- Lockner v. New York*, 15
- London, death rate in, 348; political parties in, 405; police force copied by American cities, 474; fire prevention, 480; sewage purification, 515; sliding scale for gas rates, 519
- Los Angeles, area, 346; small cost of police, 478; sewage farm, 516; large cost of schools, 528
- Louisiana, amendment of constitution by convention, 32; suffrage conditioned on residence, 41, 395; suffrage conditioned on literacy, 42; suffrage conditioned on registration, 45; recall, 126, 127; power of board of health, 157; four-year term of legislature, 203; civil and common law, 243 n.; parishes, 317 n.; appointment of county treasurer, 330; wards, 340; special legislation for cities forbidden, 370; suffrage conditioned on payment of poll tax, 397; election of heads of departments under commission government, 435
- Lowden, Frank B., governor of Illinois, 148; efforts toward administrative reorganization, 164
- Lowell, Massachusetts, water supply, source of, 507
- Lowell, A. L., *Public Opinion and Popular Government*, 105 n.; *Government of England*, 213 n., 405 n.; opinion on party voting in state legislatures, 213
- McAdoo, William, *Guarding a Great City*, 471 n.
- McBain, H. L., *Law and Practice of Municipal Home Rule*, 374 n., 381 n., 383 n., 384 n., 385 n.
- McCarthy, Charles, Wisconsin Legislative Reference Department, 216 n.
- Machine, the, in political parties, 56-60; in New York, 56-58; reasons for existence, 59-60; work in registration for primaries, 62; effect of direct primary on, 68-69; effect of initiative and referendum on, 124-125; influence on legislation, 220-222; possibility of control in commission government, 443
- McClain, Emlin, *Constitutional Law of the United States*, 235 n.
- McQuillin, Eugene, *Law of Municipal Corporations*, 362 n., 413 n.
- Macy, Jesse, *Party Organization and Machinery*, 79 n.
- Madden v. Lancaster County*, 319
- Maine, suffrage conditioned on residence, 40, 395; suffrage conditioned on literacy, 42; signatures required on referendum petition, 115; emergency legislation, 118; pardoning power, 144; appointment of attorney-general, 151; appointment of district attorneys, 152 n.; appointment of agents to enforce specified laws, 169 n.; appointment of justices of the peace, 336
- Majority, vote of, through the preferential ballot, 101, 402; required for adoption of referenda, 121-122; required for election of governor in Georgia, Mississippi, and Vermont, 133; overrepresented because of legislative apportionment, 201-202
- Mandamus, writ of, 266
- Marbury v. Madison*, 303
- Marriage, rate of, in cities, 352-353. *See also* Domestic relations
- Marshall, Texas, salary of mayor and commissioners, 436 n.
- Marshall, Chief Justice, on state taxation of imports, 10; on charters, 11; on contracts, 259; on incorporation, 264; on ministerial acts, 303
- Martial law, 145
- Maryland, framing of early constitution, 20; election of judges under early constitution, 21; revision of constitution, 33 n.; suffrage qualification, 42; governor's power of removal, 143; appointment of secretary of state, 150; appointment of district attorneys, 152 n.; regulation of lobby, 215; executive budget, 233-234; election districts, 340; special legislation for Baltimore, 379; residence requirement for voting, 395; taxation of intangible property, 538
- Massachusetts, density of population and foreign-born in, 4; estimated wealth, 5; definition of

body politic in preamble to constitution, 7; first constitution, 19-21; supremacy of law in first constitution, 23; Declaration of Rights, 23; separation of powers in first constitution, 24; power to take private property, 29; rearrangement of constitution, 29; amendment of constitution by convention, 32; amendment of constitution by referendum, 35; constitutional convention of 1917, 35; amendments of 1918, 36; suffrage qualification, early, 39; suffrage qualification, present, 42; effect of suffrage qualifications, 44, 45; party registration, 64; nomination by petition, 66 n.; information sent to voters, 80; attempt to control campaign expenditures, 86, 87, 88, 89; election law, 89; ballot, 92, 96; absent voting, 99, 100; majority vote abandoned, 101; constitutional referendum, 106-107; constitutional initiative, 109, 110-111; signatures required for initiative, 115; emergency legislation, 118; exclusion of appropriations from referendum, 119; vote required in referendum, 121-122; governor and provincial council, 132 n.; governor's salary, 134; governor's veto power, 136; check on appointing power, 140; removal of judges, 282; pardoning power, 144; powers of lieutenant governor, 150; departments of boiler inspection and of health, 160; movement toward reorganization of state administration, 163, 165; use of militia in strikes, 170; state police, 171; state aid to education, 175; board of charities, 179; board of health, early, 182; professional qualifications required for board of health, 182; importance of health commissioner, 183; minimum wage commission, 188; departments of labor and industries, 189; department of agriculture, 190; regulation of public utilities, 192-193; representative districts for legislature, 201; sessions of legislature, 203; salaries of legislators, 206; committee system,

210-211, 212, 219; regulation of lobby, 215; income tax, 227; increased inheritance tax, 228 n.; debt, 235; divorces, 262; juvenile court, 272; appointment of judges, 278, 326; term of judges, 281; oath of grand jury, 286 n.; population of counties, 318; county taxes, 321; medical examiners, 329; term of selectmen, 335; appointment of justices of the peace, 336; optional-charter system, 372, 382, 432-433; special legislation, 379; poll taxes, 397; recall in cities, 408; election of heads of departments under commission government, 435; civil-service system for cities, 467; origin of American local education in, 522; plea for making appropriations, 544; municipal debt limit, 549

Massachusetts Constitutional Convention (1918), Bulletins, 99 n., 101 n., 102 n., 105 n., 106 n., 107, 118 n., 121 n., 126 n., 144 n., 232 n., 278 n., 374 n., 383 n., 384 n., 402 n., 403, 430 n., 431 n., 432 n., 443 n., 445 n., 451

Mathews, J. M., *Principles of American State Administration*, 132 n., 138 n., 149 n., 151 n., 154 n., 156 n., 157 n., 158 n., 159 n., 168 n., 169 n., 182 n.; "New Rôle of the Governor," 147 n.; "The New Stateism," 147 n.; in *Cyclopedia of American Government*, 301 n.

Matthews, Nathan, *Municipal Charters*, 454 n., 457

Mayor, in colonial period, 360; down to the present, 363, 364-365, 370, 372-373; development of office, 419-421; how elected, 421; term, 421-422; qualifications, 422-423; salary, 423-424; characteristics, 423; powers, 424-429; power to recommend and to veto legislation, 424-426; power to prepare the budget, 426-427; power to appoint, 427-429; present position, 429; in commission government, 436-438, 443; in city-manager plan, 447-448; connection with administration, 455; appointment of administrative heads by, 458-460, 465, 530

Memphis, Tennessee, source of water supply, 507; garbage incineration, 513

Mental Hygiene, 181 n.

Message, of the governor, 135-136; of the mayor, 424-425

Metcalf, Leonard, and Eddy, H. P., *American Sewerage Practice*, 515 n.

Michigan, revision of constitution, 33 n.; revision of constitution by referendum, 35; residence qualification for voting, 41; no referendum or deficiency bills, 119 n.; legislature forbidden to repeal legislation, 122; recall, 126, 127; use of militia in strikes, 170; county superintendent of schools and state board of education, 172-173; regents of state university, 203; attitude of courts toward apportionment for legislature, 203; term of legislators, 203; county board, 321; removal of sheriffs by governor, 328; county auditors, 331; powers of township officers, 338; villages, 341; municipal home rule, 384-385, 447; extension of franchise to noncitizens, 394; city-manager plan adopted under home rule, 447

Militia, power of governor over, 144-145, 170; use of, in law enforcement, 170; use of, in strikes, 170-171

Mill, John Stuart, proportional representation advocated by, 102

Milwaukee, garbage incineration, 513

Minimum wage, 188

Ministerial and discretionary acts, 303-304

Minneapolis, commission government rejected by, 432

Minnesota, vote required for amending constitution, 32; nonpartisan primary, 67 n., 68; absent-voting law, 100; size of senate, 203; no distinction between legal and equitable remedies, 245-246; county clerk and clerk of court, 329; township boards, 338; villages, 341; municipal home rule, 384-385, 447

Minor v. Happersett, 40

Minority, choice by direct primary, 73-74; avoided in preferential

voting, 73-74, 402; possible under plurality vote, 101

Mississippi, foreign-born and negroes, 4-5; vote required for amendment of constitution, 32; amendment of constitution by constitutional convention, 32; amendment of constitution by referendum, 35; suffrage conditioned on residence, 41, 395; suffrage conditioned on literacy, 42; election of governor, 133 n.; limitation on legislative action, 135; four-year term of legislature, 203; election of judges, 278; later county judges appointed, 325; supervisor's districts, 340; suffrage conditioned on payment of poll tax, 397

Missouri, amendment of constitution by referendum, 35; districts for state party committees, 48; nonpartisan primaries adopted, 67; control of campaign expenditures, 86; regulations as to signers of referendum petitions, 115; administrative consolidation, 166; no distinction between legal and equitable remedies, 245-246; county courts, 271; jurisdiction of county courts, 326; township boards and meetings, 338; special statutes for cities forbidden, 370; home rule, 370, 384-385, 447; extension of franchise to noncitizens, 394; commission government for cities, 432

Missouri, Kansas, and Texas Railway Company v. May, 276-277

Mobile, Alabama, school expenditures, 528; miscellaneous revenues, 534 n.

Moderator in New England town meeting, 334

Montana, regulation as to residence of signers of referendum petitions, 115; appropriations excluded from the referendum, 119; limitation on legislative action, 135; use of militia in strikes, 170; townships, 340; renewal of city commissioners, 434

Montesquieu, *Spirit of Laws*, 24

Montgomery, Alabama, negro population, 349 n.

- Moore, B. F., History of Cumulative Voting and Minority Representation in Illinois, 200 n.
- Morse, W. F., Collection and Disposal of Municipal Waste, 512 n.
- Moyer v. Peabody*, 145
- Municipal government, development in United States, 359-373; in the colonial period, 359-362; from 1775 to 1820, 362; from 1820 to 1850, 364-366; from 1850 to 1870, 366-369; from 1870 to 1900, 369-371; from 1900 to 1920, 371-373; organization, 409-469; mayor-and-council type, 409-429; commission-government type, 430-444; city-manager type, 445-453; administration under, 454-550; finances, 533-550. *See also* Cities; Local government
- Municipal ownership and operation, of water supply, 509; of public utilities, 520-521; earnings from, assource of municipal revenue, 541
- Municipal Research*, 545-546
- Munn v. Illinois*, 191, 249 n.
- Munro, W. B., Initiative, Referendum, and Recall, 126 n.; Government of the United States, 310 n.; Government of American Cities, 313 n., 315-316, 345, 348 n., 351 n., 352 n., 354 n., 355 n., 362 n., 363, 374 n., 377 n., 378 n., 379 n., 382 n., 383 n., 397 n., 400 n., 401 n., 403 n., 404 n., 409 n., 412 n., 419 n., 423 n., 426 n., 428 n., 430 n., 441 n., 443 n., 445 n., 451, 454 n., 456 n., 457 n., 459 n., 461, 462 n., 463 n., 464; Bibliography of Municipal Government, 345 n., 374 n., 430 n.; on alien population, 350; Principles and Methods of Municipal Administration, 416 n., 427 n., 471 n., 475 n., 479 n., 491 n., 496 n., 500 n., 501 n., 504 n., 505 n., 506 n., 507 n., 509 n., 511 n., 512 n., 515 n., 519 n., 523 n., 533 n., 536 n., 547 n., 548 n.; "Ten Years of Commission Government," 432 n., 442 n.
- Myers, Gustavus, History of Tammany Hall, 56 n.
- Nation, relation of the states to, 7-17
- National Bank v. Commonwealth*, 10, 229
- National Conference of Charities and Corrections, Proceedings, 178 n., 272 n.
- National Municipal League, model state constitution advocated by, 200 n.
- National Municipal Review*, 200 n., 224 n., 403 n., 431 n., 432 n., 445 n.
- National Short Ballot Association, 96 n.
- National Short Ballot Bulletins*, 445 n.
- Nationality identical among the states, 6
- Nebraska, vote required for amendment of constitution, 32 n.; amendment of constitution by referendum, 35; residence requirement for voting, 41, 395; nonpartisan primaries adopted, 67; signatures required for referendum petition, 115; governor's salary, 134; governor's power of removal, 143; administrative reorganization, 166; county superintendent of education, 172-173; term of legislature, 203; debt, 235; county assessment of property, 330 n.; special statutes relating to cities forbidden, 367; municipal home rule, 384-385, 447; extension of franchise to noncitizens, 394; choice of mayor under commission government, 434
- Nebraska Legislative Reference Bureau, "Legislative Procedure in the Forty-eight States," 212 n.
- Nevada, population, 4; estimated wealth, 5; signatures required for referendum petitions, 115; legislature may not immediately change direct legislation, 122; recall of officers, 126; recall of judges, 283; limitation on legislative action, 135; limitation in connection with the budget, 234; granting of divorce in, 262
- New Bedford, Massachusetts, death rate of children, 351
- New Hampshire, adoption of early constitution, 19-20; constitutional amendments, 31; revision of constitution, 33 n.; suffrage

- qualification, 42; pardoning power, 144; powers of lieutenant governor, 150; appointment of attorney-general, 150; appointment of district attorneys, 152 n.; no auditor in, 153 n.; size of lower house, 203; salary of legislators, 206; county taxes, 321 n.; appointment of county clerks, 329; no commission-governed cities in, 432
- New Haven, Connecticut, keeps its own organization, 333-334
- New Jersey, density of population, 4; early constitution framed by convention, 20; no amendment provision in early constitution, 20; election of judges in early constitution, 21; length of early constitution, 27; no provision for constitutional convention, 32; election law, 89; governor's term, 133; governor's salary, 134; appointment of secretary of state, 150; appointment of attorney-general, 151; appointment of auditor, 153 n.; control of governor over local enforcement of law, 169; minimum-wage law, 188; county the representative district for legislature, 201; annual sessions of legislature, 203; elections of senators and representatives, 203; different terms of representatives and senators, 203; debts 235; appointment of judges, 278, 325; county board, 321; appointment of county treasurer, 330 n.; villages, 341; special statutes for cities forbidden, 370; choice of mayor under commission government, 436
- New Mexico, has no direct primaries, 68 n.; exclusion of appropriations from the referendum, 110; governor's term, 133; debt restrictions, 235-236; New Orleans, early quarantine regulations, 182; city and county boundaries coincide, 318; area, 346; commission government, 432; salary of commissioners, 434; small cost of police, 479; small cost of fire department, 484; board of health established, 485; water softened, 507; source of water supply, 508; garbage disposal, 513; poor relief, 529; revenue from public-service enterprises, 534 n.
- New York Bureau of Municipal Research, 163 n.
- New York City, organization of Tammany Hall, 57-58; disclosures of Lexow Committee as to campaign funds, 85; early board of health, 182, 485; discriminated against in state senatorial apportionment, 203-204; borough charter, 313; contains bulk of county population, 318; area, 346; population more commercial than industrial, 346; death rate, 354; ownership of homes, 357; a close corporation, 360; colonial sheriff, 361; expenditures in 1810, 364; charter of 1830, 365; Croton Aqueduct, 365; police and fire department in 1845, 366-367; executive departments in 1849, 367-368; board of estimate and apportionment, 371; special legislation, 379; may not adopt optional charter, 382; municipal parties, 405; board of aldermen, 411; election of president of board of aldermen, 414; independence of mayor, 420; mayor's term, 421; mayor's salary, 423 n.; number of administrative departments, 457; duties of police, 471-472; development of police, 474; state control over police, 475; removal of police, 478; cost of police department, 478; fire loss, 479; reason for, 480; organized fire department, 482; fire commissioner, 482; cost of fire department, 484; control over infectious diseases, 488; land value of streets, 496; street-cleaning a separate department, 497; cost of streets, 499; source of water supply, 507; organization of water department, 500; public-utility commission, 519; construction of subways, 520; cost of schools, 528; budget-making, 544, 540-547
- New York Constitutional Convention, Index Digest of State Constitutions, 42 n., 118 n., 119 n., 163 n., 397 n.; Proceedings, 163 n.

- New York County, Democratic party organization in, 56-58; population, 318; former fees of sheriff, 327
- New York State, population, 4; density of population, 4; percentage of foreign-born, 4; estimated wealth, 5; framing and amendment of early constitution, 20; term of governor under early constitution, 20; appointment of judges under early constitution, 21; separation of powers in early constitution, 24-25; periodic submission of question of constitutional revision, 33; disqualification for suffrage, 44 n.; registration for suffrage, 45; state party committee, 48; registration in primaries, 62; registration in parties, 64; return to convention system of nominations, 76 n.; campaign expenses for printed appeals to voters, 82; contributions from candidates for judicial office, 84; attempt to control election expenses, 86; definition of campaign expenses, 89; governor's term, 133; governor's salary, 134; impeachment of governor, 135 n.; veto power of governor, 137; power of governor over local officials, 143; auditor, 153; organization of board of regents, 159; organization of board of health, 160; movement toward administrative reorganization, 163-164; results of administrative reorganization, 166-167; removal of county officers by governor, 169 n.; state constabulary, 171; appointment and powers of board of education, 173-174; state library, 176; department of charity, 179; professional qualifications required of board of health, 182; importance of health commissioner, 183; constitutionality of workmen's compensation laws, 186-187; attempt to pass health-insurance bill, 187; discrimination against New York City in senatorial apportionment, 202-203; size of senate, 203; annual sessions and term of legislature, 203; salaries of legislators, 206; committee system in legislature, 212-213; rate of legislation, 217-218; legislative type of budget, 233; debt, 235; no distinction between legal and equitable remedies, 245-246; granting of divorce in, 262; juvenile court, 272; term of judges, 281; county board, early, 312-313; county board, present, 321; removal of sheriffs by governor, 328; town meeting and officers, 338; villages, 341; mayors chosen by city councils in law of 1821, 364; removal power of mayors, 370; optional-charter system, 372, 382, 432-433; special legislation for cities, 379; regulation of legislation for cities, 382-383; removal of mayors by governor, 422; budget plan, 427; civil-service system for cities, 467; training school for firemen, 482; health commissioner, 486
- Nolen, John, City Planning, 491 n.
- Nolle prosequi*, power of, 290
- Nomination, share of state party committee in, 49; by state convention, 53; by primaries, 63; by direct primaries, 66; in Great Britain compared with the United States, 86; in cities, 398-401; in commission government, 434; in city-manager plan, 447
- Norfolk, Virginia, chartered as borough, 313 n.; adopts city-manager plan, 446
- Norristown, Pennsylvania, cost of schools, 529; revenue from poll tax, 534
- North Carolina, foreign-born in, 4; framing and amendment of early constitution, 20; election of judges under early constitution, 21; suffrage conditioned on residence, 41, 395; suffrage conditioned on literacy, 42; effect of suffrage qualifications, 44; has no direct primaries, 68 n.; no executive veto, 136; powers of lieutenant governor, 150; administrative consolidation, 165; term of legislature, 203; divorce not legal in, 262; local assessors, 330 n., townships, 340; payment of poll tax, 397; optional charter system, 382, 432-433

North Dakota, amendment of constitution by constitutional convention, 32; amendment of constitution by referendum, 35; publicity pamphlets, 80 n.; regulations regarding signers of initiative and referendum petitions, 115; minimum-wage law, 188 n.; township boards, 338; villages, 341; renewal of city commissioners, 434

Nuisances, common law of, as basis for sanitary police powers, 485-486

Oberholtzer, E. P., Initiative, Referendum, and Recall in America, 105 n.

Ohio, vote required for amending constitution, 32; question of revision of constitution, 33; amendment of constitution by referendum, 35; nonpartisan primaries adopted, 67; signatures required for initiative petition, 115; special ballots for referenda, 120; governor's term, 133; governor's salary, 134; auditor, 153; administrative reorganization, 166; county the representative district, 201; senatorial districts, 201; no distinction between legal and equitable remedies, 245-246; small-claims court, 274 n.; early local government, 314; former fees of sheriffs, 327; auditor's fees in Cuyahoga County, 331; township meetings and boards, 338; villages, 341; special statutes relating to cities forbidden, 367, 381, 383; optional charter law, 381, 432-433; municipal home rule, 384-385, 447; referendum on special laws for cities, 407; commission government adopted, 407 n.; city-manager plan may be adopted under home rule, 447

Oklahoma, length of constitution, 27; modern aspects of constitution, 29; provisions in constitution regarding corporations, 30; vote required for amendment of constitution by legislature, 32; question of revision of constitution, 33; amendment of constitution by referendum, 35; suf-

frage qualification as to literacy, 42, 43; legislature may change direct legislation, 122; appointment of agents to enforce special laws, 169 n.; powers of board of health, 173; health commissioner, 183; municipal home rule, 384-385, 447

Optional charter system, 382, 383; adoption of commission government by means of, 432-433; adoption of city-manager plan, 447

Ordinances, power of city council to pass, 415-418

Oregon, amendment of constitution by referendum, 35; proposed revision of constitution, 36; residence requirement for voting, 41, 395; effect of suffrage qualifications, 44; publicity pamphlet, 80; regulation of campaign expenses, 87, 88; long ballot used, 96-98; experiments in proportional representation, 102; constitutional initiative, 110; recall petitions, 126; secretary of state as auditor, 153 n.; power of governor over law enforcement, 169; compensation of legislators, 206; small-claims court, 274 n.; recall of judges, 283; jurisdiction of county courts, 326; county districts, 341; municipal home rule, 384-385, 447

Orth, Samuel P., "Our State Legislatures," 207 n., 217

Ostrogorski, M., Democracy and the Party System in the United States, 77 n.

Pardon, governor's power of, 144; and parole, boards of, 181-182

Parish, as administrative unit in England, 310; in the Southern colonies, 311, 312

Parsons, Herbert, "Why a Political Party Needs Money," 62

Partnerships and corporations, definitions of, 262-265. *See also* Corporations

Party, political, definition, 46-47; functions, 47; organization, 47-60; state committees, 47-50; local committees, 50-51; state conventions, 51-55; the machine, 56-60; primaries, 61-76;

- tests of membership, 64, 66-67; platforms, 74; campaigns, 77-91; funds, sources of, 83-85; and proportional representation, 103-104; effect of initiative and referendum on, 124; influence on state legislation, 213-214, 220-222; influence on election of judges, 279, 280; influence of national and state, in cities, 364, 366, 368, 369, 404; in cities under home rule, 387-388; in city elections, 398-403; municipal, 403-406; abolition of, in city elections, 404-405; fusion in city elections, 406; influence on municipal administration, 464-466
- Pasadena, California, sewage farm, 516; revenue from public-service enterprises, 534 n.
- Passaic, New Jersey, foreign-born population, 349
- Patrolmen in the police force, 477-478
- Patronage, use of, in machine politics, 59-60, 465
- Pavements, street, 502-504
- Pennsylvania, estimated wealth, 5; early constitution framed by convention, 20; no amendment of early constitution, 20; single-chambered legislature provided in early constitution, 21; appointment of judges in early constitution, 21; provision for constitutional convention, 32; Declaration of Rights, 39; suffrage conditioned on property, 42; district for state party committee, 48; annual registration in primaries, 61-62; nonpartisan primary adopted, 67; campaign methods, 79; type of ballot used, 93; governor's term, 133; governor's salary, 134; governor's use of veto, 138; governor's power of removal, 143; appointment of secretary of state, 150; appointment of attorney-general, 151; organization of department of labor, 160; state constabulary, 171; health commissioner, 183; salary of legislators, 206; business taxes, 229; term of judges, 281; jurisdiction of county courts, 325; township boards and meetings, 338; villages, 341; special statutes relating to cities forbidden, 370; municipal home rule, 384 n.; suffrage conditioned on residence, 395; suffrage conditioned on payment of taxes, 397; commission government for cities, 432; power of mayor under commission government, 437; election of fiscal officers under commission government, 438; centralized bureau for fire protection, 480; taxation of intangible property, 538; municipal debt limit, 549
- Pensions for municipal employees, 468-469
- Petition, use of, in direct legislation, 109-117, 438-439; signatures, 111-116; substitution of fee for, 114; in the recall, 126-127, 439; nomination by, 399-401, 434, 447; use of, in adopting commission government by general or optional-charter laws, 443
- Philadelphia, Pennsylvania, early establishment of board of health, 182, 485; chartered as borough, 313 n.; city and county boundaries coincide, 318; industrial population, 346; area, 346; aliens, 350; a close corporation, 360; fines levied in colonial borough for failure to accept office, 361; salary of city council, 412; term and reëligibility of mayor, 421; mayor's salary, 423; need not adopt commission government, 432; control of city council 443; number of administrative departments, 457; appointment of board of education, 458-459 n., 523; civil service, 467; organization of police force, 474; training school for policemen, 478; training school for firemen, 482; organization of fire department, 482; cost of fire department, 484; source of water supply, 508; purification of water supply, 508; debt for sewerage, 517
- Phillips, J. B., "Educational Qualifications of Voters," 42 n.
- Pittsburgh, Pennsylvania, growth from settlement around fort, 345; not required to adopt commission government, 432; cost of

- fire department, 484; cost of public-health work, 490; cost of streets, 499; purification of water in, 508
- Platform, party, 52-53
- Platt, Thomas C., Autobiography, 222 n.
- Pleadings in civil cases, 295-296, 207
- Pocket veto in states, 137 n.
- Police, municipal, in period from 1820 to 1850, 365; in period from 1850 to 1870, 366-367; proper control of state over, 389; definition of term, 470; functions and duties, 470-472; European and American conceptions of, 472-473; difficulties of administration in United States, 473-474; development, 474-475; state versus local control, 475-476; chief of, 476-477; organization of department, 476-478; schools for, 478; cost, 478-479
- Police, state, 171
- Police commissioner, 476
- Police power, of the states, 10, 15-16; a limitation on private property, 249; interference of Federal courts under Fourteenth Amendment, 276-277; exercise by counties, 324; exercise by city council, 416; meaning of, and connection with the administrative police, 470; in relation to sanitation, 485-486
- Poll taxes in connection with voting, 307
- Poor relief. *See* Charities and Corrections
- Population, of the states, variations in, 4-5; of counties, 318; of towns, 333-334; of cities, 347-348; growth of, 364, 369-370, 371, 372
- Porter, M. P., "Preferential Voting and the Rule of the Majority," 101 n.
- Portland, Oregon, commission government in, 432, 433; assignment of departments under commission government, 435; election of fiscal officers under commission government, 438
- Portsmouth, Virginia, school expenditures, 528
- Posse comitatus*, 327-328
- Preferential voting, required for party elections in Idaho and Wisconsin, 73; theory of, 101-102; use in municipal elections, 402
- Primary, in general, 61-76; registration, 61-62; definition, 62-63; functions and organization, 63; nomination of candidates by, 63 n.; procedure, 64; party tests, 64; merits and faults, 65; purpose of direct, 65-66; procedure of direct, 66; open and closed, 66-67, 398; nonpartisan, 67-68, 398-399, 434, 447, 465; merits and faults of direct, 68-76; in South Dakota, 75; conclusions regarding, 76; nomination in cities, 398-399
- Privileges and immunities of citizens of the United States, 12-13
- Procedure, legislative, 217-221; judicial, 291-298
- Prohibitions, on federal government, 8-9; on states, 9-13
- Promotion, of municipal employees, 468; of teachers, 525-526
- Property, meaning in Fourteenth Amendment as interpreted by the courts, 12; holding of, as qualification for voting, 42; taxation, 225-229, 535-540; ownership, 248-249; right of, 248-251; eminent domain, 249; real and personal, 250-251; ownership of, in cities, 357; qualifications for voting in cities, 394, 396-397; as qualification for mayor, 422; difficulties encountered by city planning in taking private, 494; restrictions on, by zoning ordinances, 501; assessment of, for taxation, 535-536; valuation, 536-537
- Proportional representation, 102-104, 402-403, 451
- Protest, the, in Des Moines plan of commission government, 439
- Providence, Rhode Island, garbage disposal in, 513
- Public health, state administration of, 182-185; early attempts, 182; state board, 182-183; powers and duties of state board of, 183, 184; executive officer, 183; training of officers for, 183 n.; relation between state and local

- authorities, 184-185, 389; regulation of industries for, 185-187; municipal department of, 485-490; organization of municipal department of, 486; relation of municipal department of, to other departments, 486-487; functions of municipal department of, 487-490; hospitals, 530
- Public-service commissions, 191-193, 519
- Public-service enterprises, taxation of, 228-229, 539-540; franchises of, 518-520; types, 520; municipal operation, 521; earnings as source of municipal revenue, 541
- Public utilities, state regulation of, 191-192; definition, 517-518; in cities, 517-521; granting of franchises, 518; duration of franchises, 518-519; regulation of rates in franchise, 519-520; reversion of plant, 520; types, 520; municipal versus private operation, 521; earnings from municipal operation of, 541
- Public works, administration of, by the state, 193; administration of, by the county, 324
- Publicity pamphlet, 80
- Purification, of water supply, 508-509; of sewage, 515-516
- Qualifications, for suffrage, 40-47; for mayor, 422-423
- Quasi-corporation, the county as, 317, 318-319; the New England town as, 333; the township as, 337; Southern and Western county districts not, 339
- Quo warranto*, writ of, for information, 266
- Railroads, state regulation of, 192
- Rallies as a campaign method, 80-81
- Rates, for supply of water, 511; regulation of, in public-utility franchises, 519-520; of taxation, 541
- Ray, P. O., *Political Parties and Practical Politics*, 54 n., 56 n., 62, 77 n., 79 n., 92 n.; in *American Political Science Review*, 99 n.
- Recall, of judicial decisions, 26, 283-284; of officers, definition, 126; how invoked, 126-127; operation, 127; advisory, 127; frequency of use, 128; of the governor, 133; of judges, 283; in cities, 408; in commission government, 439-440
- Recorder in colonial boroughs, 361
- Reduction of garbage, 513
- Referendum, definition, 106, 116; constitutional, 106-107; statutory, 107; compulsory or optional, 107-108, 223; petition for, 117; limitations on, 117-119; submission to voters, 119-122; majority required, 121-122; veto by governor and change or repeal by legislature, 122; effect on electorate, 123-124; effect on parties, 124; effect on the machine, 124-125; effect on the ballot, 125; effect on legislation, 223-224; of charter amendments in cities of Illinois and Ohio, 383; in cities, 406-408; in connection with franchises, 417; in connection with commission government, 439; on ordinances under city-manager plan, 448
- Reform, in state administrative system, 163-167; in municipal administration, 372
- Refuse, disposal of, in cities, 512-513
- Registrar of deeds, 331
- Registration for voting, effect of requirement, 45, 397; in the primaries, 61-62; in parties, 64; required by election laws, 91; by mail, 100
- Reinsch, P. S., *American Legislatures and Legislative Methods*, 45 n., 155 n., 197 n., 200 n., 202 n., 203 n., 210 n., 217 n., 218 n., 221 n., 222; *Readings on American State Government*, 200 n., 207 n., 216 n.; *English Common Law in Early American Colonies*, 243
- Removal, of governor, 133-134; of local law-enforcing officers by governor, 169; of sheriff by governor, 169, 328; of judges, 282-283; power of mayor in, 370, 428-429; of mayor by governor in some New York cities, 422; of municipal administrative officers, 461
- Reserved powers in Federal Constitution, 14-16

- Residence, as qualification for voting, 41, 395-396; meaning of, 395; as qualification for mayor, 422
- Resources, natural, of the states, 5
- Revenue, of the states, sources, 225; taxation for, 225-230; table, 226; collected by counties, 319; of cities, 534-542
- Review of Reviews*, 54 n.
- Revision, of state constitutions, different from amendment, 31; provisions for, 32-36; by conventions, 32-35; by direct legislation, 35
- Rhode Island, area and population, 4; early constitution, 19; provision for constitutional convention, 32; voting conditioned on residence, 41, 395; party rules for admission to primaries, 64; no direct primary, 68 n.; provincial governor and council, 132; use of veto, 138; appointment of board of education, 173; department of charity, 179; annual sessions of legislature, 203; appointment of higher judges, 278 n.; area of Bristol County, 318; election of county judges, 325; no county treasurer, 330; town council, 335 n.; duties of town clerks, 336; school districts of towns, 336; voting in cities conditioned on property, 396; voting conditioned on payment of poll tax, 397; no commission-governed cities, 432
- Richards' Law in South Dakota, 75
- Richmond, Virginia, borough charter, 313 n.; poor relief, 529
- Rights, protected against states by Federal Constitution, 11-13; guaranteed in state constitutions, 22-23, 28-29; legal, 246-247; fundamental, 247-251
- Rochester, New York, may not adopt optional charter, 382; county care of poor relief, 529
- Roosevelt, Theodore, doctrine as to recall of judicial decisions, 26; governor of New York, 146
- Root, Elihu, chairman of New York Constitutional Convention, 163
- Rose, J. C., "Negro Suffrage," 43 n., 44 n.
- Rosenau, M. J., Preventive Medicine and Hygiene, 488 n.
- Rubbish, disposal of, in cities, 512
- Rule of law, meaning, 23; in state constitutions, 25-26
- St. Louis, state control of police force, 169, 475; city and county boundaries coincide, 318; popular election of mayor by charter of 1822, 364; board of freeholders, 385; mayor's term, 421; residence requirement for mayor, 422; number of administrative departments, 457; softening of water supply, 507; source of water supply, 508
- St. Paul, has commission government, 432; assignment of departments, 435; veto of mayor, 437; election of fiscal officers, 438
- Salary, of governor, 134; of state legislatures, 204-205, 206; of sheriffs, 327; of city councilors, 412; of mayors, 423-424; of commissioners in commission government, 434-435; of mayors in commission government, 436; of commissioners and mayor in Dayton city-manager plan, 448; of city manager in Dayton, 448; of municipal administrative officers, 461; of school-teachers, 526-527; of overseers of the poor, 530
- Salt Lake City, sewage farm in, 516
- San Antonio, Texas, source of water supply, 507
- Sanderson, J. F. See Finley, J. H.
- San Diego, California, election of fiscal officers under commission government, 438
- San Francisco, city and county boundaries coincide, 318; size of council, 411; residence requirement for mayor, 422; mayor's salary, 423; necessary vote to override mayor's veto, 425; fire board, 482; high cost of fire department, 484; appointment of school board, 523
- Sanitation, municipal, supply of water, 505-511; waste disposal, 511 513; sewage, 513 517
- San Jose, California, revenue from miscellaneous sources, 535 n.

- Savannah, negro population in, 349 n.; commission government rejected, 432
- Schnader, W. A., "Proper Safeguards for the Initiative and Referendum Petition," 109 n.
- Schools, in cities, increased demand for, 373; police, 478; for training firemen, 482; evening, 527; vocational, 527-528; for defectives, 528; open-air, 528; as aids to public health and to good citizenship, 528. *See also* Education
- Scranton, Pennsylvania, not required by state law to adopt commission government, 432
- Screening, sewage treatment by, 515
- Secretary of state, 150-151
- Securities, state supervision of, 191
- Sedimentation, sewage treatment by, 515
- Selectmen, 335
- Separation of powers, in state constitutions, 24-26; in municipal government, 363-364; abandoned by commission form of government, 430
- Septic tanks, purification of sewage by, 515
- Serial bonds, 237, 550
- Sessions of state legislatures, 203, 206; table, 204-205
- Sewage, in cities, 373, 513-517; disposal, 513-515; purification, 515-516; organization of department for, 516-517; finances, 517
- Sewage farms, 516
- Sewer department, work, 516; expenditures, 517
- Sex, as qualification for voting, 40-41, 395; population in cities according to, 351-352
- Sheriff, removal by governor, 169, 328; as judicial officer, 284-285; execution of court judgments, 297; in counties, 327-329; in colonial boroughs, 361
- Short ballot, 95-99; in municipal elections, 402
- Shreveport, Louisiana, small school expenditures in, 528-529
- Shreveport case, 192
- Shultz, B. E. *See* Beard, C. A.
- Sidewalks, 504-505
- Sinking funds, 236-237, 550
- Slaughter House Cases*, 12-13
- Sliding scale for rates in public utilities, 519-520
- Smith, R. H., "Justice and the Poor," 272 n., 274 n.
- Snedden, David. *See* Dutton, S. T.
- South v. Maryland*, 327
- South Bend, Indiana, revenue from special assessments, 534 n.
- South Carolina, negro population, 5; early constitution, 20; suffrage conditioned on residence, 41, 395; suffrage conditioned on literacy, 42; effect of suffrage qualifications, 44; direct primary, 68 n.; item-veto, 138 n.; appointment of agents to enforce special laws, 169 n.; legislature, annual session, 203; salary of legislators, 206; no distinction between legal and equitable remedies, 245-246; appointment of higher judges, 278 n.; election of county judges, 325; local assessors, 330 n.; appointment of county treasurer, 330 n.; townships, 340 n.; suffrage conditioned on payment of taxes, 397 n.; assignment of departments under commission government, 435
- South Dakota, Richards' primary law, 75; publicity pamphlets, 80 n.; signatures required on initiative petition, 114-115; emergency legislation, 117-118; effect of initiative and referendum in, 124; term of legislature, 203; county assessment of property, 330 n.; township boards, 338; villages, 341; extension of franchise to noncitizens, 394; residence requirement for voting, 395; renewal of city commissioners, 434
- Sovereignty, popular, in state constitutions, 21-23; in relation to judicial review, 25-26; in regard to amending constitutions, 30; and the electorate, 39; in law-making, 240; courts as agents of self-government, 304-305
- Sovereignty of states, 8
- Speaker of state house of representatives, 207-209; powers of, 208-209; appoints committees, 209
- Special assessments, 504, 540

- Special legislation, limited by state constitutions, 197-198; for cities, 367, 370, 372, 378-383; as means of adopting commission government, 433; city-manager plan, 447
- Spoils system in cities, 364, 366, 390, 371, 466
- Spokane, Washington, commission government adopted under home-rule law, 433
- State v. Jones*, 381
- State ex rel. v. Olcott*, 122 n.
- State Tonnage Tax Cases*, 10
- States, nature of the, 3-17; political importance, 3-4; variations in area and population, 4-5; variations in climate and resources, 5; similarities, 5-6; one nationality, 6; and the nation, 7-17; as bodies politic, 7-8; not sovereign, 8; prohibitions upon, in Federal Constitution, 9-17; obligations imposed on, 13; limitations on, through powers delegated to federal government, 14; reserved powers, 14-16; constitutions, 18-36; political system, 39-128; organization and functions, 131-305; governor, 131-148; administration, 149-193; legislature, 194-224; finance, 225-237; legal system, 238-267; judicial system, 268-305; legal position of city in, 375; attitude of legislature of, toward city, 378; special legislation for cities, 379-380; limitations of power over cities, 380-381; restricted by prohibition of special legislation, 381; regulation of special legislation, 382-383; optional city charters, 382; municipal home rule, 383-388; proper control over cities, 388-392; methods of exercising control over cities, 390-392; power of, over city administration, 458, 459-460; power of, over municipal police, 475-476
- Statistics, of delegates to a party convention, 54 n.; of expenses of state government, 230; of state debts, 235; of increases in population, 347-348; of aliens in cities, 349; of sex in cities, 351; of death rate in cities, 354; of literacy in cities, 356; of growth of cities, 364, 369-370, 371-372; of city-manager-plan cities, 451-452; of cost of police departments, 478-479; of fire losses, 479; of cost of fire departments, 484; of cost of public health, 489-490; of cost of streets, 490-500; of cost of water supplies, 510; of sewage and sewerage finance, 517; of school finance, 528-529; of municipal expenditures, 533, 542-543; of sources of municipal revenue, 534; of municipal debts, 548-549
- Staunton, Virginia, city manager first adopted, 446
- Stimson, F. J., American Constitution, Federal and State Constitutions, 8
- Stockton, California, revenue from special assessments, 534
- Story, R. M., The American Municipal Executive, 419 n., 435 n., 437 n., 448 n.
- Streets, maintenance of, in cities, 370, 373; importance, 496-497; department, organization and functions, 497; acquisition of land for, 498-499; cost, 499-500; classification, 500; special problems, 500-502; methods of construction and pavements, 502-504; sidewalks, 504-505
- Subpœna, writ of, 297
- Suffrage, in the states, restrictions on, 39-40; present qualifications, 40-44; disqualifications, 44; effect of various qualifications, 44-45; election districts, 45-46; in cities, 364, 394-397
- Sumter, South Carolina, city-manager plan adopted, 446
- Supremacy, federal, 16-17; of the Constitution, 17; of law, 23; legislative, in state constitutions, 27; over cities, 363
- Supreme Court of the United States, on the police power, 15, 239; as court of appeal from state courts, 276-277; power to declare statutes unconstitutional, 301-302
- Survey as basis for city plan, 494
- Tables, of members, terms, sessions, and salaries of state legisla-

- tures, 204-205; of state revenue receipts, 226; of state governmental-cost payments, 230; of urban and rural population, 347; of municipal expenditures, 544
- Tacoma, Washington, election of fiscal officers under commission government, 438 n.; revenue from public-service enterprises, 534 n.
- Tammany Hall, organization and influence, 56-58
- Tampa, Florida, revenue from miscellaneous sources, 535 n.
- Taunton, Massachusetts, amendment of charter, 376
- Taxation, municipal, grant of powers of, 365; tax rate determined by city council, 416; chief source of municipal revenue, 534; general-property, 535-537; state income tax, 538-539; on public-service enterprises, 539-540; on business, 540; rate of, 540; collection of, 540-541
- Taxation, state, restrictions of Federal Constitution on, 9-10; of instruments of the federal government, 10; effect on, of federal power, 14; kinds, 225-230; general-property, 225-227, 535-537; income, 227-228, 538-539; inheritance, 228; corporation, 228-229; business, 229; limitations on, 229-230; subjection of private property to, 249; levied or collected by counties, 319, 323, 330; valuation of property for, by assessors, of counties, 330; levied or collected by treasurers or by constables in towns, 336, 337; of New England towns, 336; by township boards in central states, 337; payment of, as suffrage qualification, 397
- Taxpayer's suit, 235
- Teachers in the schools, 175-176, 525-527
- Tennessee, amendment of constitution, 32; constitutional convention, 32; power of legislature over militia, 144-145; appointment of auditor, 153 n.; term of legislature, 203; jurisdiction of county courts, 271, 326; early local government, 314; organization of county boards, 322; local assessors, 330 n.; civil districts, 340; payment of poll tax required for voting, 397
- Term, of governor, 20, 133; of state legislatures, 203; of state legislatures, table of, 204-205; of judges, 281-282; of town officers, 335, 336; of colonial mayors, 360; of city councils, 411; of mayors, 421-422; of commissioners in commission government, 434; of heads of administrative departments, 460-461; of school-teachers, 526
- Texas, area, 4; amendment of constitution provided for by constitutional convention, 32; direct primaries, 68 n.; administrative consolidation, 165; Rangers, 171; debt restrictions, 235; population of smallest county, 318; precincts in, 340; special statutes relating to cities forbidden, 370; municipal home rule, 384, 447; extension of franchise to non-citizens, 394; payment of poll tax required for voting, 397; recall in cities, 408; city-manager plan may be adopted under home rule, 447
- Textbook, campaign, 80; in schools, 175
- Thorpe, F. N., Federal and State Constitutions, 18 n.
- Tocqueville, Alexis de, on the action of juries, 304-305
- Tonnage, states may not tax, 10
- Torrens system of land registration, 331
- Torts, definition, 251-252, 256-257; varieties, 257-259; liability of county for, 318-319; liability of city for, 378
- Town, in New England, units for legislative representation, 201; as administrative unit in England, 310; in New England colonies, 312; in the middle colonies, 312-313; in New England, definition and characteristics of, 333-334; town meeting, 334-335; selectmen, 335; town clerk, assessors, treasurer, and school committee, 336; justices of the peace, 336-337; others, 337
- Township, in central states, 337-339; definition and characteristics, 337; meetings, 337-338; of-

- ficers, 338-339; justices of the peace, 339; school districts, 339
 Train, Arthur, *The Prisoner at the Bar*, 288 n.
 Transportation systems in cities, 520
 Treason, 252
 Treasurer, state, 152-153; county, 330-331; town, 336; in colonial boroughs, 361
 Trenton, New Jersey, chartered as colonial borough, 313 n., 360
 Trial, in criminal cases, 292-295; in civil cases, 296-297
 True bill, 287 n. *See* Indictment
 Tso-Shuen Chang, *History and Analysis of the Commission and City Manager Plans*, 445 n.
 United States Congress, Judiciary Act of 1916, 276, 284; Immigration Act of 1913, 356
 United States Department of Commerce, Bureau of the Census, *Financial Statistics of States (1919)*, 230, 235 n.; *Financial Statistics of Cities*, 373 n., 479 n., 484 n., 489 n., 499 n., 500 n., 510 n., 517 n., 520 n., 533, 534 n., 535 n., 540 n., 542 n., 543 n., 548 n., 549 n.; *Comparative Financial Statistics of Cities under Council and Commission Government*, 1913 and 1915, 431 n., 443 n.; *General Statistics of Cities (1915)*, 507 n.
 United States Provost Marshal General, *Second Report on Operations of the Selective Service System*, 355 n.
 Universities, state, 176
 Utah, adopts woman suffrage, 40; limitation on legislative action, 135; term of legislature, 203; size of Senate, 203; executive budget in, 234; municipal home rule, 384 n.; commission government for cities, 432
 Vermont, single-chambered legislature, 21 n.; amendment of constitution provided by constitutional convention, 32; absent voting, 99; majority vote required for election of governor, 133; administrative consolidation, 173; representative districts, 201; cities under-represented, 202; county courts, 271; appointment of higher judges, 278 n.; term of judges, 281; election of county judges, 325; appointment of county clerks, 329; appointment of county treasurers, 330 n.; no commission-governed cities, 432
 Veto, power of the governor in early constitutions, 21; on direct legislation, 122; on legislative measures, 136-139, 220; on separate items, 137-138; extent and influence, 138-139; as limitation on legislature, 196; power of the courts, 301-302, 304; no power of, by mayor in colonies, 360; development and present, 363, 364-365, 368, 370, 425; merits, 425-426; in commission government, 436, 437
 Villages, definition, 341; functions, organization and officers, 342
 Virginia, early constitution framed by convention, 20; no amendment provided in early constitution, 20; election of judges, 21; separation of powers, 24; Bill of Rights, 24, 28; constitutional conventions in, 34; early suffrage qualifications, 39; later suffrage qualifications, 41, 42; item-veto, 138; appointment of board of education, 173; appointment of higher judges, 278 n.; early parish and county, 310-311, 314; coincidence of city and county boundaries, 318; organization of county boards, 322; election of county judges, 325; magisterial districts, 340; optional-charter system, 382, 432-433; suffrage conditioned on residence, 395; suffrage conditioned on property and payment of poll tax, 397
 Voters. *See* Electorate
 Waco, Texas, salary of mayor and commissioners, 435, 436
 Washington, D. C., growth from political forces, 345; street area, 496; source of water supply, 508; water purification in, 508; revenue from miscellaneous sources, 534

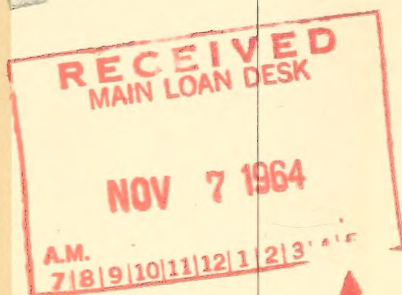
- Washington, suffrage qualification in, 42; effect of suffrage qualification, 45; nonpartisan primaries adopted, 67; circulation of initiative and referendum petitions, 112; legislature may not immediately change direct legislation, 122; recall, 126, 127; item-veto, 138; municipal home rule, 384, 447
- Waste disposal, municipal, importance, 511; ashes and rubbish, 512; refuse, 512-513; garbage, 513; sewage, 513-517
- Watchers at the polls, 90
- Water supply, in cities, construction of Croton aqueduct for New York City, 365; development, 367, 373; importance, 505; requisites, 505-507; sources, 507-508; purification, 508-509; departments, 509-510; finance and rates, 510-511
- Wealth, estimated, of various states, 5
- Weber, A. F., *Growth of Cities*, 345 n., 348 n., 351 n., 352 n., 353 n., 354 n., 357 n., 358 n.
- West Hoboken, New Jersey, area and population, 346; revenue from miscellaneous sources, 535 n.
- West Virginia, governor's power of removal, 143; jurisdiction of county courts, 271, 326; magisterial districts, 340; special statutes relating to cities forbidden, 370; residence requirement for voting, 395
- Whipple, G. C., *Value of Pure Water*, 505 n., 507 n.
- White, F. H., "Growth and Future of State Boards and Commissions," 154 n., 155 n.
- Wichita, Kansas, revenue from special assessments, 534 n.
- Wilcox, D. F., *Government by All the People*, 105 n.; *The Great Cities of America*, *The American City*, 345 n.
- Willoughby, W. F., *The Movement for Budgetary Reform in the States*, 232 n.
- Willoughby, W. W., *The Constitutional Law of the United States*, 13 n., 146 n.
- Wilmington, Delaware, revenue from miscellaneous sources, 535 n.
- Winston-Salem, North Carolina, school expenditures, 528
- Wisconsin, disqualification for voting, 44 n.; requirement for use of preferential ballot in party elections, 73; regulation of campaign expenses, 87; term of governor, 133; secretary of state acts as auditor, 153 n.; removal of county officers by governor, 169 n.; county superintendent of education, 172-173; regulation of public utilities, 192; attitude of courts toward legislative apportionments, 203; regulation of lobby, 215-216; legislative reference department, 216; county boards, 321; removal of sheriffs by governor, 328; township officers, 338; villages, 341; municipal home rule, 384 n.; extension of franchise to noncitizens, 394; residence requirement for voting, 395; term of city commissioners, 434
- Wisconsin Legislative Reference Department established to supply information formerly furnished by lobbies, 216
- Woman suffrage, spread of movement in the states, 40; adoption by federal amendment, 41; reasons for, 41
- Woonsocket, Rhode Island, foreign-born population, 349
- Worcester, Massachusetts, disposal of garbage, 513; disposal of sewage, 515
- Workers, party, who they are, 58; expenses, 82
- Workmen's compensation laws, 186-187
- Writs, kinds of, issued by the courts, 266-267, 295, 297, 298-299
- Wyoming, density of population, 5; vote required for amendment of constitution, 32; woman suffrage, 40; suffrage conditioned on literacy, 42; publicity pamphlets, 80 n.; suffrage conditioned on residence, 395
- Zoning ordinances, 500-501

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